HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.516 of 2017

JUDGMENT :

This appeal is filed by the Reliance General Insurance Company Limited aggrieved of the order and decree dated 22.11.2016 in M.V.O.P.No.348 of 2012 on the file of the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Nizamabad.

2. According to the petitioner, on 3-11-2011 at about 10-00 a.m. the deceased-Kayitha Rajaiah @ Bhoomaiah was traveling in an auto rickshaw bearing No. AP 25 V 8707 from Banswada to Hanmajipet village and on the way when they reached Venkatapoor village shivar near to the land of Dharavath Valya, the driver of the auto drove it in a rash and negligent manner at high speed and lost control over the auto and dashed a motorcycle from the opposite direction and then the auto turned turtle, due to which, the deceased Rajaiah fell down from the auto and sustained injuries and crush injuries all over the body and immediately he was shifted to the Government Hospital, Banswada and on the advice of the doctors, he was shifted to Government Hospital, Nizamabad where the doctors provided first aid and referred him to Gandhi Hospital, Secunderabad, where he succumbed to injuries while

undergoing treatment on 4.11.2011 at 5-30 p.m. According to the petitioners, the deceased Rajaiah @ Bhoomaiah was aged 48 years, doing agriculture and getting an amount of Rs.15,000/- per month. Thus, the petitioners claimed compensation of Rs.6,00,000/- under various heads against the respondent Nos.1 and 2 who are owner and insurer of the offending auto.

3. Respondent No.1 filed counter contending that he has no knowledge about the accident, as the said vehicle sold to one Hussain.D and it was also transferred in the name of purchaser and the said vehicle was insured with respondent No.2. It is further contended that the compensation claimed by the petitioners is excessive and therefore, prays to dismiss the petition.

4. Respondent No.2 filed counter disputing the manner of accident, age, avocation and income of the deceased. It is further contended that the driver of the offending vehicle was not having valid driving license at the time of accident and that the compensation claimed by the petitioners is excessive and therefore, prays to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred on 3.11.2011 at about 4-30 p.m. at Venkatapoor village was due to rash and negligent driving of auto bearing No. AP 25 V 8707 by its driver?

2. Whether Kayath Rajaiah received injuries in that accident and died of the injuries?

3. Whether the petitioners are entitled for compensation, if so, to what amount and from which respondent?

4. To what relief?

6. In order to prove their case, PWs.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondent No.2, RWs.1 and 2 were examined and Exs.B1 to B4 were marked.

7. The Tribunal on considering the oral and documentary evidence available on record, partly allowed the O.P., awarding a total compensation of Rs.5,23,000/- along with costs and interest @ 7.5% per annum from the date of filing of the petition till the date of realization against the respondent Nos.1 and 2 jointly and severally. Aggrieved thereby, the appellant-Insurance Company has filed this appeal.

8. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned counsel for the claimants-respondent Nos.1 and 2 herein. Perused the material available on record.

9. The learned Standing Counsel for the appellant-Insurance Company contended that the decree of the Tribunal is contrary to law, weight of evidence and that the accident occurred due to the rash and negligent driving of the motorcycle and not due to the rash and negligent driving of the auto. It is further contended that the driver of the auto did not possess valid driving license and as such, Tribunal grossly erred in awarding the compensation against the respondents 1 and 2 jointly and severally. Accordingly, prayed to set aside the impugned order in the O.P.

10. The learned counsel for the respondent Nos.1 and 2/claimants contended that the learned Tribunal has awarded just and reasonable compensation and the same needs no interference by this Court.

11. With regard to the manner of accident, except stating that the rider of the motorcycle drove the vehicle in rash and negligent manner and caused the accident, there is no rebuttal evidence produced by the respondent No.2-Insurance Company in support of their contention.

Hence, considering the evidence of PWs.1 and 2 coupled with documentary evidence available on record, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle.

12. Coming to the quantum of compensation, according to the petitioners, the deceased Rajaiah @ Bhoomaiah was aged 48 years, doing agriculture and getting an amount of Rs.15,000/- per month. Since there is no oral or documentary evidence produced by the petitioners to prove the income of the deceased, considering the age and avocation of the deceased and the accident occurred is of the year 2011, the tribunal rightly taken the income of the deceased at Rs.4,500/- per month, deducted 1/3rd of the same towards personal expenses and by adopting multiplier '13', awarded an amount of Rs.4,68,000/- towards loss of earnings. The tribunal also awarded an amount of Rs.25,000/- towards loss of consortium, Rs.20,000/- towards funeral charges and Rs.10,000/- towards transportation charges, which are just and reasonable and in all the tribunal awarded an amount of Rs.5,23,000/- under various heads, which is just and reasonable. Therefore, I see no reason to interfere with the findings given by the tribunal on this aspect.

13. With regard to the liability, though it is contended by the appellant-Insurance Company that the offending vehicle was sold to one Hussain, he did not produce any oral or documentary evidence to prove the same. Further it is also contended that the driver of the offending vehicle was not having valid driving license. But there is no mention in the charge sheet that the driver was not having valid driving license. Further RW-2, Junior Assistant of Regional Transport Authority, Nizamabad, categorically stated that on the date of accident, the driver of offending vehicle was holding valid driving license to drive non-transport auto. The question as to whether the driver of the vehicle holding licence to drive non-transport vehicle was authorised to drive transport vehicle, is no longer *res integra* in view of the judgment in the case of ***Mukund Dewangan vs. Oriental Insurance Company Limited and others***[1], wherein the Apex Court held that "*the mere fact that the driver who possessed a licence to drive the light motor vehicle did not possess a licence to drive heavy transport vehicle by itself would not be sufficient to hold that the insurance company would be absolved of its liability to pay compensation*". In view of the above clarification by the Apex Court, the said contention of the learned

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[1] (2016) 4 SCC 298

Standing Counsel regarding non-possessing of transport driving licence by the driver of respondent No.2 and therefore, it is not liable to pay the compensation does not merit consideration and the same is rejected. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

14. The appeal is devoid of merit and it is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

31.01.2023
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