THE HON'BLE SMT. JUSTICE M. G. PRIYADARSINI

M.A.C.M.A. No.3373 of 2018

JUDGMENT:

This appeal is filed by the Insurance Company aggrieved of the order and decree dated 29.08.2018 in M.V.O.P.No.751 of 2012 on the file of the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge(II Fast Track Court), Warangal at Jangaon.

2. Brief facts of the case are that the claimants filed a petition under Section 165 and 166 read with Section 144 of the Motor Vehicles Act, 1988 claiming compensation of Rs.15,00,000/- for the death of one Sanda Kumaraswamy, son of claimant Nos.1 & 2 and brother of Claimant No.3 (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 04.08.2010. According to the claimants, on the fateful day, while the deceased after completion of his duty, proceeding on his Hero Honda Motor cycle bearing No.AP 15 AJ 7159 from Pegadapally X road to his house, when he reached in front of Pragathi school, which is near to KUC first gate, Hanumkonda, at about 10.00 p.m., one lorry bearing No.AP 36 W 3084 being driven by its driver in rash and negligent manner with high speed and without blowing the

horn, dashed the deceased's vehicle from behind, as a result of which, the deceased fell down on the road with motor cycle, the offending vehicle ran over the deceased and died on the spot. According to the claimants, the deceased was aged 20 years, working as medical representative at Centaur Pharmaceuticals and earning Rs.20,000/- per month. Therefore, they filed the claim petition against the respondents claiming compensation of Rs.15.00 lakhs towards compensation under different heads.

3. While the respondent Nos.1 & 2 remained ex parte, the respondent No.3/insurance company filed counter disputing the manner of accident, age, avocation and income of the petitioner. It is further contended that the compensation claimed by the petitioners is excessive and therefore, prays to dismiss the petition.

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

1. Whether the accident took place due to rash and negligent driving of vehicle bearing No.AP-36W-3084 (Lorry) driven by its driver as per Sec.166 of M.V.Act?
2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
3. To what relief?

5. In order to prove their case, PWs.1 & 2 were examined and Exs.A1 to A12 were marked. On behalf of the respondents, RW.1 was examined and Exs.B1 to B3 were marked.

6. The Tribunal on considering the oral and documentary evidence available on record, partly allowed the O.P., awarding a total compensation of Rs.21,80,000/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization against the respondent. Aggrieved thereby, the appellant-Insurance Company has filed this appeal.

7. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned counsel for the claimants-respondents herein. Perused the material available on record.

8. 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 lorry. It is further contended that the driver of the lorry did not possess valid driving license and as such, Tribunal grossly erred in awarding the compensation against the respondent Nos.1 and 2 jointly and severally. Accordingly, prayed to set aside the impugned order in the O.P.

9. The learned counsel for the respondent No.1/claimant contended that the learned Tribunal has awarded just and reasonable compensation and the same needs no interference by this Court.

10. 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 PW-1 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, which needs no interference by this Court.

11. Coming to the quantum of compensation, according to the claimants, the deceased was aged 25 years and earning Rs.20,000/- by working as medical representative, in support thereof the claimants have produced Ex.A10, salary structure certificate and Ex.A11, appointment letter, both issued by Centaur Pharmaceutical company. However, as the claimants have failed to examine the author of Exs.A10 and A11, considering Exs.A8 and A9, which discloses that the deceased

was B.Sc graduate, the tribunal has fixed the monthly income of the deceased at Rs.20,000/-. Further, as the deceased was bachelor, after deducting 50% therefrom towards his personal expenses and applying the multiplier '18', the Tribunal has awarded Rs.21,60,000/- (Rs.10,000/- x 12 x 18) towards loss of dependency. That apart, the Tribunal has awarded Rs.10,000/- towards funeral expenses, Rs.10,000/- towards transport charges. Thus, the quantum of compensation awarded by the Tribunal cannot be said to be on higher side.

12. With regard to the liability, it is contended by the appellant-Insurance Company that the driver of the offending vehicle was not having valid driving license. In support of his claim, RW-1, categorically stated that on the date of accident, the driver of offending vehicle was not holding valid driving license and they have issued legal notices under Exs.B2 & B3 and even after service of the said notices, the respondent Nos.1 & 2 failed to respond. But the fact remains that by the time of accident, the offending vehicle was insured with the respondent No. 3 and Ex.B.1 policy was very much in force. In the case of third party risks, as per the decision in **National Insurance Company Ltd. v. Swaran Singh and others**[1], the insurer had

[1] (2004) 3 SCC 297

to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. In the said decision, the Apex Court considered the doctrine of "*pay and recover*" examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving license of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Recently, the Apex Court in case of **Shamanna v. The Divisional Manager, the Oriental Insurance Company Limited and Others**[2], following its earlier decision in **Swaran Singh** (supra), reiterated that *even if the driver does not possess any driving license, still the insurer is liable to pay the compensation and that he can recover the award amount from the owner of the offending vehicle after paying the amount.* In view of the above clarification by the Apex Court, the said contention of the learned Standing Counsel regarding non-possessing of driving licence by the driver of offending vehicle and therefore, it is not liable to pay the compensation does not merit consideration and the same is rejected. Hence, in view of the above discussion, this Court is of the opinion that there are

[2] 2018 ACJ 2163

no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

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

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

01.02.2023
gms/mnv

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