HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.1737 of 2010

JUDGMENT:

Challenging the order and decree, dated 30.06.2010, passed in M.V.O.P.No.458 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short "the Tribunal"), the claimant filed the present appeal.

The facts, in issue, are as under:

The claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,50,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 21.05.2006. It is stated that on that day the claimant, along with others, was traveling in Innova Car bearing No. AP 29 H-4329 from Shirdi, Tuljapur to Hyderabd and when the said vehicle reached near Nirna Cross Roads on N.H.No.9, the driver of the said vehicle drove it in a rash and negligent manner with high speed and dashed to a Bus-stand building, due to which the inmates of the vehicle sustained grievous injuries and one person died on the way to hospital. Basing on the complaint, a case in Crime No.67 of 2006 has been registered against the driver of the Car. The claimant was shifted to Government Hospital, Mannaekkali and from there to Gandhi Hospital, Secunderabad. The claimant had also taken treatment in Apollo Hospital, Hyderabad and incurred an amount

of Rs.50,000/- for his treatment. It is further stated that the claimant had sustained permanent disability due to the fracture injuries. Hence, the claimant filed claim-petition against the respondents 1 and 2, being the owner and insurer of the said Car.

Before the Tribunal, the 1st respondent remained *ex parte* and the 2nd respondent filed counter denying the manner in which the accident took place, age, avocation, earnings of the claimant and also denied the injuries sustained by the claimant and the medical expenditure incurred by him. It is also denied by the 2nd respondent that the vehicle involved in the accident was insured with the 2nd respondent and the person, who drove the vehicle, was having valid and subsisting driving license to drive such vehicle and the vehicle was roadworthy to ply. It is further contended that the claimant is not entitled to claim interest on non-pecuniary damages and also the interest claimed is highly excessive. In the additional counter, it is stated by the 2nd respondent that as per the police record, the crime vehicle was used for hire purpose at the time of accident and the policy was issued for private use, as such, the 1st respondent has violated the terms and conditions of the policy, as such the 1st respondent alone is liable to pay the compensation and the 2nd respondent has no liability to pay any compensation and the petition is liable to be dismissed against the 2nd respondent.

Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
2) Whether the petitioner is entitled for compensation, if so, at what quantum and from whom?
3) To what relief?

On behalf of the claimant, P.Ws.1 and 2 were examined and got marked Exs.A1 to A5. On behalf of the respondents, R.W.1 was examined and Exs.B1 to B5 were marked.

After analyzing the evidence available on record, the Tribunal while awarding compensation of Rs.26,707/- with proportionate costs and interest @ 7.5% per annum from the date of petition till realization, held that since the claimant has traveled in a hire vehicle, it is against the terms and conditions of the insurance policy and, therefore, the Insurance Company is not liable to pay compensation and it is the 1st respondent, the owner of the Car, alone is liable to pay the compensation. Challenging the said finding and also not being satisfied with the quantum of compensation awarded by the Tribunal, the present appeal is filed by the claimant.

During pendency of the appeal, the 1st appellant/claimant died and as such appellants 2 to 4 were impleaded as the legal representatives of the claimant.

Learned Counsel for the appellant/claimant submitted that the Tribunal dismissed the claim against the 2nd respondent on the

ground that the 1st respondent has violated the terms and conditions of the insurance policy by using the crime vehicle for hire purpose. He further submits that in case of violation of policy conditions including driver of the offending vehicle not having valid driving licence at the time of accident, gratuitous passenger etc., still the Insurer has to pay the compensation to the claimant at the first place and shall recover the same from the owner of the vehicle later. In support of his contention, he relied upon the judgment of the Apex Court in ***Manuara Khatun and others v. Rajesh Kumar and others***[1]**.** Insofar as the enhancement of compensation is concerned, learned Counsel for the claimant would submit that the compensation awarded by the Tribunal is on lower side and that the Tribunal ought to have awarded adequate compensation. Therefore, he prayed to enhance the compensation awarded by the Tribunal.

On the other hand, the learned Standing Counsel for the Insurance Company submitted that with regard to the quantum of compensation, the Tribunal has adequately granted the compensation and the same needs no interference by this Court. Insofar as the liability is concerned, he submits that the vehicle was used for hire purpose and the claimant was traveling in the vehicle as gratuitous passenger at the time of accident and, therefore, the Tribunal has rightly dismissed the claim against the 2nd respondent and the said order does not require any interference.

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[1] (2017) 4 SCC 796

On considering the arguments advanced by both the learned Counsel, the issues that arise for consideration in this appeal are as under:-

1. Whether any cause of action survives to the legal heirs of the injured/claimant?

2. Whether the vehicle was used for hire purpose and claimant, who was traveling in the vehicle, comes under the purview of gratuitous passenger and if the claimant comes under the purview of gratuitous passenger, pay and recovery can be ordered against the insurer?

Point No.1: -

In ***Kannamma v. Deputy General Manager, Karnataka State Road Trans.Corpn.***[2] a Full Bench of High Court of Karnataka dealt with such type of question as to whether in case of claim for compensation for personal injuries and towards expenses etc., on death of claimant, the claim-petition abates. The question was answered observing that whether the injured/claimant dies as a consequence of bodily injuries sustained in the motor accident, then, his legal representatives can prosecute the claim relates to loss to the estate of the deceased. In the present case, there is nothing on record to show that the appellant has died as a result of suffering injuries in the accident.

[2] 1991 ACJ 707

In ***Smt. Ram Ashari and others v. HRTC and another***[3] this type of question cropped up before Himachal Pradesh High Court, which was answered observing that in case where appellant was injured in an accident, on his death during pendency of appeal for enhancement of compensation, the appeal abates, since the appeal which was filed for personal injuries cannot be continued by his legal representatives. It was further observed that an action in torts for claim of compensation for damages on account of injuries suffered by an injured as a right personal to the injured and this right cannot be continued by legal heirs.

It is settled law that claim for permanent injury would abate on the death of original claimant. A Full Bench of Madhya Pradesh High Court on a reference in the case of ***Bhagwati Bai v. Bablu***[4] held as under:-

> "Thus in case of personal injury not resulted in death the legal representative of such person, who was injured and who died subsequently not on account of accident but for some other reason cannot maintain an application for compensation for personal injury sustained in an accident under sub-Section (1) of Section 166 of the Motor Vehicles Act."

Relying upon the aforesaid judgments of various High Courts, recently, the Punjab Haryana High Court in ***Sukhdev Singh through his L.Rs v. Ramesh Kumar (FAO-131-2012 (O&M), dt. 14.03.2019)***

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[3] (2005) 3 RCR (Civil) 128
[4] 2007 ACJ 682

held that the cause of action does not survive to his legal heirs since the injured/claimant died during pendency of the appeal.

In the instant case also, the injured/claimant has died during pendency of the appeal, hence the appeal for enhancement of claim awarded for permanent injury filed under Section 173 of the Motor Vehicles Act, would also abate on the death of claimant and would not survive to his legal representatives. Even otherwise, on merits also, I find that the compensation awarded by the Tribunal is just and adequate and no reason is there to enhance it.

Point No.2:-

Insofar as the liability of the 2nd respondent is concerned, the Tribunal observed that R.W.1 stated in his evidence that in Ex.B5-161 Cr.P.C. statement, the witness, Krishna Reddy stated that they hired the Innova Vehicle and traveled in it. In ***Rajendra Singh v. State of U.P. and another***[5], the Apex Court held that "the statements under Section 161 Cr.P.C. being wholly inadmissible in evidence, could not at all be taken into consideration." Relying upon the said judgment, in ***N.Rama Krishna Reddy v. M.Santhakumari and another*** (C.R.P.No.2939 of 2013) this Court held as under:-

> "It is well settled that a statement made under Section 161 Cr.P.C. is not a substantive piece of evidence. However, in view of the proviso to Sub-section (1) of Section 162 Cr.P.C., the statement can be used for the limited purpose of

[5] (2007) 7 SCC 378

contradicting the maker thereof in the manner set out in the said proviso."

Further, in ***National Insurance Co. Ltd. V. Saju P.Paul***[6]**,** the Apex Court took note of entire previous case law on the subject mentioned and examined the question in the context of Section 147 of the M.V. Act. While allowing the appeal filed by the Insurance Company by reversing the judgment in ***Saju P.Paul v. National Insurance Co. Ltd.***[7] of the High Court, it was held on facts that since the victim was traveling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, the Apex Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

Recently, relying upon the said judgment, the Apex Court in ***Manuara Khatun*** (1 supra) held that the direction to the Insurance Company, being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them to first pay the awarded sum to the claimants and then recover the paid awarded sum from the

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[6] (2013) 2 SCC 41
[7] 2012 ACJ 1852

owner of the offending vehicle in execution proceedings as per the law laid down in Para No.26 of ***National Insurance Co. Ltd. V. Saju P.Paul (3 supra).***

It is not in dispute that the Innova Car was insured and Ex.B2-Insurance Policy clearly indicates that the accident has occurred during the policy period, it can be said that the claimant was travelled as a gratuitous passenger in the crime vehicle. In **Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited**[8], the Apex Court while dealing with the case of gratuitous passenger directed the insurer to pay the awarded sum to the claimant therein and recover the same from the insured in the same proceedings.

For the aforesaid discussion and in view of the benevolence object of the Motor Vehicles Act, even though the liability of Insurance Company is exonerated, still the Insurance Company is liable to pay the compensation to the claimant at the first instance and then recover the same from the owner of the offending vehicle by invoking the principle "*pay and recover*" as laid down by the Apex Court in **Manuara Khatun v. Rajesh Kr. Singh (1 supra)**.

Accordingly, the appeal is partly allowed, directing the 2nd respondent-Insurance Company to deposit the compensation amount of Rs.26,707/- with proportionate costs, as awarded by the Tribunal, to the credit of the O.P. along with accrued interest within two months from the date of receipt of a copy of this judgment, and

[8] 2019(5) ALD SC 287

then recover the said amount from the 1st respondent-owner. There shall be no order as to costs.

Miscellaneous petitions, if any pending in this appeal, shall stand dismissed.

JUSTICE G. SRI DEVI

02.02.2022
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