

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No. 1675 of 2015

JUDGEMENT:

The appellant is 2nd respondent/Insurance company and the respondents are petitioners and respondent No.1 in M.V.O.P.No.503 of 2011 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Kadapa. The appellant filed the present appeal questioning the legal validity of the order of the Tribunal.

2. For the sake of convenience, both the parties in the appeal will be referred to as they are arrayed in the claim petition.

3. The claim petitioners filed the petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.16,00,000/- for the death of S. D. Babji, who is husband of 1st petitioner and father of petitioner Nos.2 & 3, in a motor vehicle accident that took place on 26.07.2006.

4. The brief averments in the petition filed by the petitioners are as follows:

On 26.07.2006 at about 9.00 p.m. when the deceased was crossing a road in front of the office of Biotechnology Research Centre, Karakambadi road, Tirupati, a motor cycle bearing registration No.AP 04K 2103 of the 1st respondent came from Karakambadi side in a rash and negligent manner and dashed the deceased, as a result, the deceased sustained severe injuries and died on the spot. The 1st respondent is the owner and the 2nd respondent is the insurer of the motor cycle, hence, both the respondents are jointly and severally liable to pay compensation to the petitioners.

5. The respondents filed counters separately by denying the manner of accident, age, avocation and income of the deceased and pleaded that the accident occurred due to non-observance of traffic rules by the deceased.

It is pleaded by the 2nd respondent that the rider of the motor cycle was not having valid driving licence at the time of accident and thereby, there is a clear violation of policy conditions, as such, the Insurance company is not liable to pay any compensation to the petitioners.

6. Based on the above pleadings of both the parties, the following issues were settled for trial by the Tribunal:

- 1) Whether the deceased S.D.Babji died in a motor vehicle accident that occurred on 26.07.2006 at 9.00 p.m. opposite Biotrim, Tirupati on Tirupati-Karakambadi road due to rash and negligent driving of the rider of the motor cycle bearing No.AP 04K 2103 of the 1st respondent being insured with 2nd respondent?
- 2) Whether the respondents are jointly and severally liable to pay compensation?
- 3) Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
- 4) To what relief?

7. During the course of enquiry in the claim petition, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Ex.B.1 was marked.

8. At the culmination of the enquiry, based on the material available on record, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the rider of offending motor cycle and accordingly, allowed the petition in part granting an amount of Rs.12,82,000/- towards compensation to the petitioners with proportionate costs and interest at 7.5% p.a. from the date of petition till the date of deposit against both the respondents. Aggrieved against the said order, the 2nd respondent/Insurance company preferred the instant appeal.

9. Heard learned counsels for both the parties and perused the record.

10. Learned counsel for the appellant/Insurance company mainly contended that the Tribunal failed to see that the rider of the offending motor cycle was not holding a valid driving licence at the time of accident which is a gross violation of the conditions of the policy.

11. Now, the point for determination is:

Whether the order of the Tribunal needs any interference of this Court and to what extent?

12. **POINT:** In order to prove the rash and negligent driving of the driver of the offending motor cycle, the petitioners relied on the evidence of P.Ws.1 and 3. P.W.1 is none other than the wife of the deceased and she is not an eye witness to the accident. P.W.3 is an eye witness to the accident. He deposed that he witnessed the accident and while the deceased was crossing a road, the offending motor cycle came from Karakambadi side and dashed the deceased, as a result, the deceased sustained severe injuries and died on the

spot. There is nothing in the cross-examination of P.W.2 to discredit his evidence and the contra suggestions put to him were also denied by him. The petitioners also relied on Ex.A.1-certified copy of first information report and Ex.A.4-certified copy of charge sheet. Ex.A.1 goes to show that first information report was registered against the rider of the offending motor cycle i.e., 1st respondent. Ex.A.2 clearly goes to show that after completion of investigation, the Investigating Officer filed a charge sheet against the rider of the offending motor cycle. The evidence of P.W.3 coupled with Exs.A.1 and A.4 clearly proves about the rash and negligent driving of the 1st respondent/rider of the offending motor cycle resulting in the instantaneous death of the deceased. On appreciation of the evidence on record, the Tribunal also came to the same conclusion. Therefore, this Court feels that there is no need to interfere with the said finding given by the Tribunal.

13. As per Ex.A.2-certified copy of inquest report and Ex.A.3-certified copy of post mortem report, the age of the deceased was

43 years. The multiplier applicable to the age group of the deceased is "14" as per the decision of the Hon'ble Supreme Court of India in **Sarla Varma** case. The dependents on the deceased are three in number. It is the case of the petitioners that the deceased was working as a Forest Section Officer at the time of his death and drawing a monthly salary of Rs.12,476/-. By giving cogent reasons, the Tribunal fixed the monthly income of the deceased as Rs.11,000/- i.e., Rs.1,32,000/- per annum, and after deducting 1/3rd income towards personal expenses of the deceased and by applying the appropriate multiplier '14' to the age group of the deceased as per **Sarla Varma** Case, arrived the loss of dependency to the family members of the deceased at Rs.12,32,000/- (Rs.88,000/- (Rs.1,32,000/- - Rs.44,000/-) x multiplier '14'). Besides, the Tribunal awarded Rs.5,000/- towards funeral expenses, Rs.5,000/- towards transport charges, Rs.30,000/- towards loss of consortium to the 1st petitioner and Rs.10,000/- towards love and affection. By giving cogent reasons, the Tribunal came to the

conclusion that the petitioners are entitled to a total compensation of Rs.12,82,000/-. This Court finds that there is no legal flaw or infirmity in the said finding given by the Tribunal, therefore, it warrants no interference.

14. It is not in dispute that the 1st respondent is rider cum owner of the offending motor cycle, the 1st respondent insured the motor cycle with the 2nd respondent/Insurance company under Ex.B.1-copy of policy, the policy was also in force as on the date of accident and the policy covers the risk of a third party.

15. It is the contention of the 2nd respondent/Insurance company that the 1st respondent was not having valid driving licence at the time of accident, so, there is a clear violation of conditions of the policy. R.W.1, who is the Administrative Officer of the 2nd respondent, deposed in his evidence that the 1st respondent/rider of the motor cycle was not having valid and effective driving licence at the time of accident as per the charge sheet. R.W.2, who is the

Junior Assistant-cum-Stenographer in the office of the Deputy Commissioner of Transport, Kadapa, also deposed that at the time of accident, the rider of the motor cycle was not having valid driving licence to drive the motor cycle. The evidence of R.Ws.1 & 2 clearly goes to show that the 1st respondent/rider of the offending motor cycle was not having valid driving licence to ride the motor cycle at the time of accident.

16. The principle laid down in the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh and others***¹ is that even in case of absence, fake or invalid licence or disqualification of the driver for driving, the Insurance company is liable to satisfy the award in favour of 3rd party at the first instance and later recover the award amount from the owner of offending vehicle, even when the Insurance company could able to establish breach of terms of policy on the part of the owner of the offending vehicle.

¹ 2004 (2) ALD (SC) 36

17. For the foregoing discussion, the 2nd respondent/Insurance Company is liable to pay the compensation to the petitioners in the first instance and later recover the same from the 1st respondent/owner of the offending motor cycle, by filing an execution petition and without filing any independent suit.

18. Accordingly, the 2nd respondent/Insurance Company is directed to deposit the compensation amount of Rs.12,82,000/- with costs and interest as ordered by the Tribunal, before the Tribunal in the first instance within two months from the date of this judgment and later recover the same from the 1st respondent/owner of the offending motor cycle by filing an execution petition and without filing any independent suit. The order passed by the Tribunal with regard to the liability is modified to the extent indicated above. The order of the Tribunal in all other respects shall remain intact.

19. The appeal is accordingly disposed of. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeals shall stand closed.

21st July, 2023
cbs

V.GOPALA KRISHNA RAO, J

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