(2016) 08 AP CK 0078

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 2004 of 2010 and 2580 of 2015

Errolla Pedda Yellaiah, Nizamabad — APPELLANT

Vs

Sri P. Nagaraju, Nizamabad District — RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, Section 163-A, Section 173

Citation : (2016) 2 AnWR 634

Hon'ble Judges : Sri U. Durga Prasad Rao, J.

Bench : Single Bench

Advocate : Mr. Ravi Shankar Jandhyala, Counsel, for the Respondent No. 2; Mr. Lakkadi Dayaker Reddy, (not present) Counsel, for the Petitioner

Final Decision : Disposed Off

Judgement

Sri U. Durga Prasad Rao, J. - Aggrieved by the Award dated 24.09.2010 in O.P.No.324 of 2009 passed by the Chairman, MACT?cum?IX Additional District and Sessions Judge, Kamareddy (for short ''the Tribunal''), both claimants and Insurance Company preferred M.A.C.M.A.No.2004 of 2010 and M.A.C.M.A. No.2580 of 2015 respectively.

2. The factual matrix of the case is thus:

(a) The claimants are husband and son of deceased-Errolla Pedda Rajavva. Their case is that on 20.12.1999, the deceased while travelling in auto bearing No.AP 25 T 6946 from Baswapur to Sangameshwar and when the said auto reached the limits of Kachapoor, the driver drove the auto at high speed and in a rash and negligent manner and lost control and thereby the vehicle dashed against the road side stone and turned turtle resulting in instant death of Rajavva and injuries to others. It is averred that the auto driver was responsible for the accident. On these averments, the claimants filed O.P.No.324 of 2009 under Section 166 and 163A of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos.1 and 2, who are the owner and insurer of the offending auto and claimed Rs.8,00,000/- as compensation.

(b) R.1 remained ex parte.

(c) R.2/Insurance Company filed counter and opposed the claim petition denying the material allegations and urged to put the claimants in strict proof of the same. R2 denied the age, avocation and income of the deceased. It contended that there was no fault on the part of driver of the auto and he had no valid and effective driving licence at the time of accident. It further contended that compensation claimed was excessive and exorbitant and thus prayed to dismiss the O.P.

(d) During trial, PWs.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of claimants. RW1 was examined and Exs.B1 to B8 were marked on behalf of respondents.

(e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.2,98,000/- with costs and interest at 7.5% p.a. against respondent Nos. 1 and 2 as follows:

Loss of estate, love and affection Rs.2,88,000-

Loss of consortium Rs. 5,000-00

Funeral expenses Rs. 5,000-00

Total: Rs.2,98,000-00

Hence the appeals: (1) MACMA No.2004 of 2010 by the claimants and 2) MACMA No.2580 of 2015 by the Insurance Company.

3. The parties in both the appeals are referred as they arrayed before the Lower Tribunal.

4 (a) M.A.C.M.A.No.2004 of 2010: Heard arguments of Sri Lakkadi Dayakar Reddy, learned counsel for appellants/claimants and Sri Ravi Shankar Jandhyala, learned counsel for respondent No.2/Insurance Company. Respondent No.1/ owner unserved.

(b) M.A.C.M.A No.2580 of 2015: Heard arguments of Sri Ravishankar Jandhyala, learned counsel for appellant/Insurance Company. Notice sent to R1 and R2/ claimants served but there is no representation on their behalf. Respondent No.3/ owner dismissed for default vide Court order dated 12.03.2015.

5.(a) S ri Ravi Shankar Jandhyala, learned counsel for Insurance Company would argue that the Tribunal erred in fastening liability on the Insurance Company in spite of the fact that owner of the vehicle committed breach of the terms of the policy, as the auto driver had no valid and effective driving licence as on the date of accident which fact was amply proved by the Insurance Company. He submitted that Insurance Company gave notices to owner and driver to produce the driving licence but they failed to respond which indicates that driver had in fact no driving licence. Further, in Ex.A4 the Motor Vehicle Inspector clearly mentioned that the driver has not produced licence before him. All these facts should have prompted the Tribunal to exempt the Insurance Company from liability, he argued.

(b) Nextly, questioning the eligibility of claimants to claim compensation, learned counsel would submit that both the claimants who are husband and son of the deceased, are majors and not dependents of the deceased and in that view, they are not entitled to compensation except under few heads viz. funeral expenses, loss of consortium and loss of love and affection. He thus prayed that the appeal preferred by the Insurance Company be allowed and counter appeal preferred by the claimants be dismissed.

6.(a) Per contra, learned counsel for claimants, Sri Lakkireddi Dayakar Reddy argued that mere issuance of the notice to owner and driver will not absolve the liability of the Insurance Company towards third parties and therefore, the Tribunal having found the policy was in force rightly fastened liability on the Insurance Company.

(b) Nextly, he argued that both the claimants being the husband and son of the deceased are admittedly legal representatives of the deceased and hence irrespective of the fact that they are majors are entitled to compensation.

(c) Then, regarding adequacy of compensation, learned counsel would argue that the Tribunal erred in fixing the monthly income of the deceased at Rs.2,400/-. Having regard to her avocation of vegetable business, the Tribunal ought to have fixed her income at least at Rs.3,000/- per month. In this regard, he relied upon the following decisions.

1. D. Krishnaveni v. Mohd. Sikander, 2009 (6) ALT 620.

2. Laxmi Devi v. Mohammad Tabbar, 2008 (3)ALD 129 (SC).

(d) He also argued that the Tribunal failed to award adequate compensation for loss of consortium and funeral expenses. He would argue that the claimants are entitled to compensation under the above heads in terms of Apex Court decision in Rajesh v. Rajbir Singh and others, 2013 ACJ 1403 SC. He thus prayed to allow his appeal and enhance the compensation suitably while dismissing the appeal filed by the Insurance Company.

7. In the light of above rival arguments, the points for determination are:

1. Whether the Tribunal was right in fastening liability on the Insurance Company?

2. Whether the compensation awarded by the Tribunal under different heads is just and reasonable or needs interference?

8 (a) Point No.1: The ground on which the Insurance Company repudiates its liability is that the auto driver had no valid and effective driving licence as on the

date of accident. Needless to emphasize, the burden of proof solely rests on the Insurance Company to claim exemption. Record shows that no doubt, Insurance Company issued notices to owner and driver to produce the licence but they did not respond. The question is whether by that count the Insurance Company can be said to have discharged its burden. This aspect is no more res integra. In a number of decisions vide: National Insurance Company Limited rep. by its Divisional Manager v. Parital Venkateswarlu and another, 2009 ACJ 88 (AP) = 3008 (4) ALT 521; New India Assurance Company Limited v. Turubilli Bharathi, Unreported judgment in MACMA No.534 of 2009 dated 03.06.2014; Bajaj Allianz General Insurance Company Limited v. M.Sreedevi, Unreported judgment in MACMA No.1656 of 2010 dated 05.11.2014, this Court held that mere issuance of notice to owner and driver will not amount to discharging the burden. Therefore, this plea is of no avail to the Insurance Company. It appears the Insurance Company also relied on Ex.A4-MV Inspector report wherein in Column No.4 with regard to particulars of driving licence, it is mentioned "driving licence was not produced". Even such mention is not a clear proof of driver had no driving licence. It would at best reveal that at the time of inspection of MV Inspector, the driver did not produce the driving licence. Except that it cannot be said that he did not possess driving licence at all. It should not be forgotten that the police have not charge sheeted the driver for not holding driving licence. So, for all the aforesaid reasons, the claim of the Insurance Company that owner committed breach of the terms of the policy for his driver not possession driving licence cannot be accepted.

(b) The next contention of the Insurance Company is that the claimants being majors are not entitled to compensation for loss of dependency. This argument also does not hold much water because in spite of the fact that claimants are majors, they are nevertheless the legal representatives of the deceased and represent her estate within the meaning of Section 166 of MV Act hence entitled for compensation. Hence, none of the points raised by the Insurance Company in its appeal merits consideration. The Tribunal is held, right in fastening liability on the Insurance Company.

This point is answered accordingly.

9. Point No.2: Now, coming to the arguments advanced on behalf of claimants, though it was claimed by the claimants that the deceased was attending agriculture work and doing vegetable business and earning Rs.10,000/- to 12,000/- per month, they did not produce any cogent evidence. The Tribunal considering the deceased as labourer fixed her income as Rs.80/- per day and accordingly computed compensation. I see no reason to differ with the same. The decisions relied upon by the learned counsel will not come to the aid of the claimants.

(b) Sofaras compensation for funeral expenses and loss of consortium is concerned, in my view, the same has to be enhanced in the light of decision in Rajesh''s case (3 supra). Accordingly, compensation for funeral expenses is enhanced to Rs.25,000/- and considering the fact that 1st claimant lost his wife in the middle age, compensation for loss of consortium is enhanced to Rs.25,000/-. Thus, the total compensation payable to the claimants under different heads as follows:

Loss of estate, love and affection Rs.2,88,000-

Loss of consortium Rs. 25,000-00

Funeral expenses Rs. 25,000-00

Total: Rs.3,38,000-00

Thus, the compensation is enhanced by Rs.40,000/-. This point is answered accordingly.

10. In the result:

1. MACMA No.2580 of 2015 filed by the Insurance Company is dismissed.

2. MACMA No.2004 of 2010 filed by the claimants is partly allowed and compensation is enhanced from Rs.2,98,000/- to Rs.3,38,000/- with proportionate costs and interest @ 7.5.% p.a. from the date of OP till the date of realisation.

3. The respondents in the OP are directed to deposit the compensation amount within two months from the date of receipt of copy of this Judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.