
(2023) 03 TEL CK 0076

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 515 Of 2017

Oriental Insurance Company Limited,

APPELLANT

Vs

S. Ashok Reddy

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2023) 03 TEL CK 0076

Hon'ble Judges : M.G. Priyadarsini, J

Bench : Single Bench

Advocate : A.Naveen Kumar

Final Decision : Dismissed

Judgement

1. This appeal is preferred by the Oriental Insurance Company Limited, questioning the order and decree, dated 31.10.2016 made in M.V.O.P.No.409 of 2012 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Courts, Hyderabad (for short, "the Tribunal").

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.65,00,000/- for the death of one S.Hema Latha (hereinafter referred to as "the deceased"), who died in a motor vehicle accident. According to the claimants, on 11.10.2011 while the deceased and her relative Smt. Naga Jyothi were proceeding on Hero Honda Activa bearing No.AP 13 S 5475 from Mehdiapatnam towards her residence, at about 3:30 p.m., when they reached near Mehraj Cross Road, one School Bus bearing No.AP 12 V 0569, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner at high speed and dashed the Hero Honda Activa of the deceased from back side, as

a result, the deceased and her relative were fell down on the road and sustained grievous injuries. Immediately after the accident, the deceased was shifted to Care Hospital, Banjara Hills, Hyderabad, where she succumbed to injuries while undergoing treatment. On a complaint, a case in Crime No.264 of 2011 has been registered against the driver of the offending vehicle. According to the claimants, the deceased was hale and healthy prior to the accident and she was running business under the name and style of M/s. New Sri Sai Stores and also doing L.I.C. business and earning Rs.50,000/- per month. It is the further case of the claimants that due to sudden demise of the deceased, the claimants lost their source of income and also love and affection. Therefore, the claimants laid a claim against the respondents, seeking compensation of Rs.65,00,000/-under various heads.

4. Before the Tribunal, respondent No.1 remained ex parte. Respondent No.2 filed counter denying the averments made in the claim-petition including the age, income and avocation of the deceased. It is also stated that the accident occurred due to the negligence of the deceased and that there was no negligence on the part of the driver of the school bus and that the accident occurred only due to the negligence of the deceased. It is further stated that the driver of the School Bus was not having valid driving licence at the time of the accident and therefore, the insurance company is not liable to pay the compensation. It is also contended that the amount claimed is excessive and prayed to dismiss the claim petition.

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

1) Whether the deceased died in the accident on 11.10.2011 due to rash and negligent driving of the driver of School Bus bearing No.AP 12 V 0569?

2) Whether the petitioners are entitled to the compensation? If so, to what amount and from whom?

3) To what relief?

6. During trial, on behalf of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to P18 and Exs.X1 and X2 were marked. On behalf of the respondents R.W.1 was examined and Exs.B1 to B3 were marked.

7. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of driver of the School Bus and awarded total compensation of Rs.38,10,500/- together with interest @ 7.5% per annum. Aggrieved by the said order, the appellant-Insurance Company filed the present appeal.

8. Heard both sides and perused the material available on record.

9. A perusal of the order reveals that the Tribunal passed a well considered order by taking into consideration all the aspects. The Tribunal has framed the Issue

No.1 as to whether the accident had occurred due to rash and negligent driving of the driver of the School Bus bearing No.AP 12 V 0569, to which the Tribunal has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the School Bus and has answered in favour of the claimants and against the respondents. Therefore, I see no reason to interfere with the said finding.

10. Insofar as the quantum of compensation is concerned, after considering the oral evidence of P.W.1 coupled with Exs.P16 to P18, income tax returns, the Tribunal has rightly taken the income of the deceased at Rs.25,000/- per annum and after adding the future prospects; after deducting 1/4th amount and applying multiplier at '14' the Tribunal has awarded Rs.38,10,500/-Therefore, I see no reason to interfere with the quantum of compensation awarded by the Tribunal.

11. As regards the liability is concerned, admittedly, as seen from the record, the driving licence of the offending vehicle was not renewed and therefore, there is breach of terms and conditions of the Insurance Policy as rightly contended by the learned Standing Counsel for the Insurance company. But the fact remains that by the time of accident, the offending vehicle was insured with respondent No.2 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 (2004) 3 SCC 297, the insurer had 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 the case of Shamanna v. The Divisional Manager, the Oriental Insurance Company Limited and Others 2018 ACJ 2163, 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, the Tribunal has rightly directed respondent No.2 to pay the compensation amount at the first instance and then recover the same from the owner of the vehicle i.e., respondent No.2.

12. Accordingly, the M.A.C.M.A. is dismissed confirming the order and decree, dated 31.10.2016 made in M.V.O.P.No.409 of 2012 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Courts, Hyderabad. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.