

(2010) 09 AP CK 0060
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 1593 of 2010

The Oriental Insurance Company Limited	APPELLANT
Vs	
Dumpa Haritha Reddy and Others Sardar Narpath Singh and Others	RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) 09 AP CK 0060

Hon'ble Judges : Ghulam Mohammed, J;G. Chandraiah, J

Bench : Division Bench

Advocate : Warlu and Sahadeva, for the Appellant; P. Ganga Rami Reddy, for the Respondent

Judgement

Ghulam Mohammed, J.—This Appeal is filed by the Insurance Company, u/s 173 of the Motor Vehicles Act, challenging the order, dated 04-12-2009 in O.P. No. 435 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-Family Court, Nellore.

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

3. The brief facts, which are necessary for the disposal of the Appeal, are as follows:

The claimants are the wife, daughter and mother of late Seetharami Reddy (hereinafter referred to as "deceased") respectively, who died in a motor accident. On 18-12-2004 at about 16-30 hours, while the deceased, aged about 26 years, was working at the Campus of NTPC Land Filling Zone-I, Dhibar Village, Patna District, Bihar State, the driver of the offending vehicle bearing No. JH-10-E-3016 drove the vehicle in a rash and negligent manner and dashed against the deceased as a result of which the deceased sustained grievous injuries and succumbed to the injuries instantaneously. Therefore, the claimants filed the O.P.

stating that the deceased was earning Rs. 12,000/-per month towards salary and due to his sudden demise, they are deprived of his love and affection and support. They claimed compensation contending that since the driver of offending vehicle caused the accident, and as he drove the vehicle at the time of accident in the regular course of his employment under the first Respondent-owner of the vehicle, and as the offending vehicle was insured with the second Respondent-Insurance Company, both the Respondents are liable to pay compensation to them.

4. Respondents 1 and 2 filed separate counters denying the material allegations in the petition and disputed the manner of accident, age and income of the deceased and his relationship with the claimants. The first Respondent-owner of the vehicle alleged that the accident occurred due to the negligence of the deceased, and as the offending vehicle was insured with the second Respondent-insurance company and the insurance policy was valid as on the date of accident and as the driver of the offending vehicle had valid and effective driving license to drive the vehicle, he is not liable to pay any compensation to the claimants and if any compensation is awarded, the second Respondent-insurance company is liable to pay the same.

5. The second Respondent-insurance company disputed the validity of the license possessed by the driver of the offending vehicle to drive the vehicle at the time of accident and also disputed the coverage of the insurance policy.

6. Basing on the pleadings, the Tribunal framed the following issues for consideration:

1. Whether the pleaded accident occurred on account of the rash and negligent driving of the tipper bearing No. JH-10-E-3016 by its driver and whether it resulted in the death of Dumpa Seetharami Reddy (deceased)?

2. Whether the driver of the crime vehicle is having valid and effective driving license as on the date of accident?

3. Whether the claimants are entitled for compensation, if so, at what rate and against which of the Respondents?

4. To what relief?

7. To substantiate their claim, claimants 1 and 3 were examined themselves as P Ws.1 and 2 and examined P Ws.3 and 4 and got marked Exs.A-1 to A-15. On behalf of the Respondents, none were examined, however, Ex.B-1, copy of the insurance policy, was marked.

8. After considering the oral and documentary evidence, on issue No. 1, the Tribunal observed that though Respondents 1 and 2 filed their written statements disputing the manner of accident, they did not adduce any evidence on their behalf and held that the accident occurred on account of the rash and negligent driving of the driver of the offending vehicle. On issue No. 2, the Tribunal held

that the driver of the offending vehicle had valid and effective license to drive the vehicle. On issue No. 3, the Tribunal took the monthly salary of the deceased at Rs. 12,000/-, which comes to Rs. 1,44,000/-per annum and after deducting half of the same and after applying multiplier "17", on the basis of the age of the first claimant-wife of the deceased, determined the loss of dependency at Rs. 12,24,000/-. The Tribunal also awarded an amount of Rs. 15,000/-towards loss of estate, Rs. 5,000/-towards loss of consortium to the first claimant-wife of the deceased and Rs. 5,000/-towards funeral expenses and thus awarded a total compensation of Rs. 12,49,000/-.

9. The learned Counsel for the Appellant-insurance company contended that the accident occurred due to the negligence of the deceased and that the driver of the offending vehicle had no valid driving license to drive the vehicle at the time of accident. He further submitted that the compensation awarded by the Tribunal is on higher side and it is liable to be reduced.

10. The learned Counsel for the Respondents-claimants contended that the Tribunal, after considering the evidence of P Ws.3 and 4 in proper perspective, rightly held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and that he was having valid and effective driving license to drive the vehicle at the time of accident and also rightly determined the compensation by taking into consideration Ex.A-15, service certificate of the deceased, and the evidence of P Ws.1 to 4. Therefore, there are no grounds to interfere with the order of the Tribunal and the Appeal is liable to be dismissed.

11. In view of the rival contentions, the points arise for consideration are:

1. Whether the accident occurred due to rash and negligent driving of the offending vehicle or not?;
2. Whether the driver of the offending vehicle has valid and effective driving license to drive the vehicle as on the date of accident or not? and
3. Whether the compensation awarded by the Tribunal is on higher side?

POINT No. 1:

12. The Tribunal observed that the police investigation clearly reveals that the driver of the offending vehicle caused the accident and he drove the said vehicle at the time of accident in a rash and negligent manner. Though Respondents 1 and 2 filed their written statements disputing the manner of accident, they did not adduce any evidence on their behalf. Even the persons, who signed the written statement, did not come to witness box to speak to its contents. The Tribunal, ultimately, held that the evidence of P Ws.1 to 4 is sufficient to hold that the accident occurred on account of rash and negligent driving of the driver of the offending vehicle.

13. P Ws.3 and 4 are the eyewitnesses to the accident. PW-3 deposed that he worked as Inspector/Site In-charge of M/s. Sai Venkataramana Constructions at

the Campus of NTPC Land Filling Zone-I, Dhibar Village, Patna District and the deceased was appointed in their firm as Works Manager on trainee basis from March, 2004 till October, 2004 and from November, 2004 till his death. He further deposed that on 18-12-2004 at about 16-30 hours, while the deceased was in the work-spot in their campus, the driver of the offending vehicle drove the vehicle in a rash and negligent manner and dashed the deceased, as a result of which the deceased sustained grievous injuries and died instantaneously. The evidence of PW-4 also corroborated the evidence of PW-3.

14. The evidence of P Ws.3 and 4 is very clear about the manner in which the accident occurred. The Respondents, except disputing the manner of accident, did not adduce any rebuttal evidence to prove their contention. In this regard, it is pertinent to refer to the decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, wherein the Supreme Court, while dealing with *res ipsa loquitur*, held as under:

The normal rule is that it is for the Plaintiff to prove negligence but as in some cases considerable hardship is caused to the Plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the Defendant who caused it, the Plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the Defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident " speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the Plaintiff to prove the accident and nothing more. It will then be for the Defendant to establish that the accident happened due to some other cause than his own negligence... Where the maxim is applied the burden is on the Defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the Defendant and that the accident is such as in ordinary course of things does not happened if those who had the management used proper care.

15. In view of the law laid down by the Supreme Court in the above judgment, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle.

POINT No. 2:

16. So far as this point is concerned, the Tribunal relied on the judgment in *Narsinva V Kamath and Ors. v. Alfredo Antonio Doe Martains and Ors.* 1985 ACJ 397 (SC) wherein it was held that:

When the Insurance Company contends that the driver did not have a valid driving license at the time of accident, the burden is on it to prove the said contention and mere non-production of license by the driver does not exonerate the Insurance Company and therefore, it is liable to indemnify the owner of the

said vehicle.

17. The Tribunal also observed that in the written statement, the first Respondent-owner of the vehicle clearly admitted that the driver of the offending vehicle had valid and effective driving license to drive the vehicle as on the date of accident. The second Respondent-insurance company, except making a bald allegation that the driver of the offending vehicle had no valid driving license to drive the vehicle at the time of accident, did not adduce any evidence to substantiate the said contention. The Tribunal further observed that if really the driver had no valid license, he would have been charge sheeted u/s 3 read with 181 of the Act, but the police did not charge sheet him under the said section. The Tribunal, ultimately, held that the driver of the offending vehicle had valid and effective driving license to drive the vehicle as on the date of accident.

18. After going through the oral and documentary evidence and the order of the Tribunal, we find that the Tribunal appreciated the evidence of P Ws.1 to 4 and Exs.A-1 to A-4 in proper perspective and rightly held that the driver of the offending vehicle had valid and effective driving license to drive the vehicle as on the date of accident.

POINT No. 3:

19. The claimants contended that the deceased was aged about 26 years and he studied Master's Degree in Science and was working as Works Manager in M/s Sri Sai Venkataramana Constructions Contract Works, Nellore, on a monthly salary of Rs. 12,000/-. In support of their contention, they filed copies of the academic certificates of the deceased. According to the claimants, the deceased worked as a Junior Lecturer in Nalanda Junior College of Science & Arts, Vijayawada before he joined in M/s Sai Venkataramana Constructions Contract Works and to prove the same, they have filed Exs.A-13 and A-14, Staff Identity Card and Salary Certificate respectively issued by Nalanda Educational Institution.

20. The Tribunal observed that the deceased studied post graduation and worked as Junior Lecturer on a monthly salary of Rs. 9,200/-and after that, he joined in M/s Sri Sai Venkataramana Constructions and was paid Rs. 12,000/-per month. As the deceased was working in Bihar State, he must be incurring half of his salary for his personal living expenses and would be contributing the rest of the same for the support of his family members. Accordingly, the Tribunal has taken the salary of the deceased at Rs. 12,000/-per month, which comes to Rs. 1,44,000/-per annum and out of the same, deducted half towards personal living expenses of the deceased, and applied multiplier "17", basing on the age of the first claimant-wife of the deceased and determined the loss of dependency at Rs. 12,24,000/-. The Tribunal also awarded Rs. 15,000/-towards loss of estate, Rs. 5,000/-towards loss of consortium and Rs. 5,000/-towards funeral expenses. In total, the Tribunal has awarded a sum of Rs. 12,49,000/-.

21. In view of the above circumstances, we hold that the Tribunal had appreciated the oral and documentary evidence adduced on either side in proper

perspective and rightly taken the income of the deceased at Rs. 12,000/-per month and applied multiplier "17" and determined the loss of dependency at Rs. 2,24,000/-. The Tribunal awarded a sum of Rs. 15,000/-towards loss of estate, but as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the claimants are entitled to only Rs. 10,000/-. Therefore, the amount awarded towards loss of estate is reduced to Rs. 10,000/-. The amounts awarded by the Tribunal under other heads stand confirmed. Therefore, the claimants are entitled to only Rs. 12,44,000/-.

22. Accordingly, the Appeal is allowed in part to the extent indicated above. No order as to costs.