HDFC Ergo General Insurance Company Ltd Vs Sunkulamma

Court: High Court For The State Of Telangana:: At Hyderabad

Date of Decision: Oct. 19, 2022

Acts Referred: Motor Vehicles Act, 1988 â€" Section 166

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

Bench: Single Bench

Advocate: T Mahender Rao, K Venkatesh Gupta

Final Decision: Dismissed

Judgement

1. M.A.C.M.A.No.3934 of 2014 is preferred by the insurance company, HDFC ERGO General Insurance Company Limited, questioning the order

and decree, dated 19.09.2011 made in O.P.No.485 of 20010 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge

(Fast Track Court), Mahabubnagar at Gadwal (for short, the Tribunal). Challenging the very same order and decree, the claimants filed cross-

objections seeking enhancement of compensation.

For the sake of convenience, hereinafter the parties are referred to as per their array before the Tribunal.

The claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the death of the deceased,

Kurva Chinna Ramudu, aged about 32 years, who died in a motor vehicle accident that occurred on 12.08.2009. It is stated that on the fateful day,

while the deceased was proceeding towards Jillamgeri of Karnataka State on a motorcycle, at about 6:00 p.m., when he reached the limits of Baligera

Village, bus bearing No. AP 27Y 0102, owned by respondent No. 2, insured with respondent No. 3 and hired with respondent No. 1, being driven by

its driver in a rash and negligent manner, dashed the motorcycle of the deceased. As a result, the deceased fell down and died on the spot. According

to the claimants, the deceased was getting an income of Rs.1,00,000/- per annum by doing agriculture apart from Rs.200/- per day from dairy

business. Therefore, they laid a claim for Rs.5.00 lakhs against the respondents.

Before the Tribunal, while the respondent Nos. 1 & 2 remained ex parte, respondent No. 3, insurance company, opposed the claim petition. After

considering the oral and documentary evidence on record, the tribunal came to the conclusion that the accident was occurred due to the rash and

negligent driving of the offending bus by its driver and awarded total compensation of Rs.4,04,000/- with interest @ 7.5% per annum to be paid by the

respondent Nos. 2 and 3 jointly and severally. Aggrieved by the said order, the insurance company filed the appeal and seeking enhancement of

compensation, the claimants filed the cross-objections.

Heard both sides and perused the material available on record.

The only contention raised by the learned Standing Counsel for the appellant, insurance company, is that before the tribunal, by producing Exs.B.1 to

B.4, apart from examining R.W.1, the insurance Company has adequately established the fact that the cheque, Ex.B. 1, issued by the owner of the

offending bus, towards insurance premium, was dishonoured due to insufficient funds and returned unpaid by the bank through the cheque return

memo, Ex.B. 2, that as the contract of insurance became void ab initio, the insurance company has issued the policy cancellation letter, Ex.B. 3, and

therefore, the insurance company is not on risk in respect of insurance policy, Ex.A.7, as there is no contract between the insurance company and the

offending bus. It is contended that the cheque issued by the owner of the offending bus, towards premium, was on 30.03.2009 and due to it dishonour

on 07.04.2009, the insurance company cancelled the policy on 12.05.2009 and whereas the accident was occurred on 12.08.2009 and therefore, in the

absence of valid subsisting contract between the insurance company and the owner of the offending bus, no liability can be fastened upon the

insurance company for payment of compensation.

On the other hand, the learned counsel for the claimants, cross-objectors, has contended that inasmuch as the insurance company has not challenged

Ex.A.7, policy, and has not cross-examined P.W.1 to the effect that Ex.A.7 is not the copy of the insurance policy and as the cancellation of the

policy under Ex.B.3 pertains to different engine and chassis number, the tribunal, after analyzing the evidence brought on record, has rightly rejected

the claim of the insurance company as to the cancellation of Ex.A.7 policy and the said findings needs no interference by this Court.

As regards the quantum of compensation awarded by the tribunal, it is contended by the learned counsel for the claimants that as the dependants of

the deceased are five in number, as per the decision of the Apex Court in Smt. Sarla Varma v. Delhi Transport Corporation (2009) 6 SCC 121, the

deduction towards personal expenses of the deceased should be 1/4th, but the tribunal has erroneously deducted 1/3rd towards personal expenses. It is

further contended that though the deceased was owning Ac.10.00 guntas of land, as seen from Ex.A.8, and getting an income of Rs.1,00,000/- per

annum, apart from Rs.200/- per day by doing milk business, yet the tribunal has fixed the meagre monthly income of Rs.3,000/- and therefore, the

learned counsel seeks enhancement of the compensation awarded by the tribunal. Even the amount of Rs.20,000/-awarded by the tribunal under

conventional heads needs enhancement.

Considering the contention of the insurance company about its liability on the ground that the policy stood cancelled by the time of the accident, basing

on Exs.B. 1 to B.4, the tribunal has extensively dealt with the issue at para No. 18, which reads as under:-

Ã¢â‚¬Å“18. In the present case Ex.A7 is copy of policy is marked through the evidence of PW.1. The respondent No.3 has not challenged Ex.A7 and the

respondent No.3 has not cross examined PW.1 stating that Ex.A7 is not the copy of the insurance policy. Hence it is held that Ex.A7 is the copy of

the insurance policy of the crime vehicle. The respondent No.3 has not filed copy of Insurance policy to show that Ex.A7 is not the copy of insurance

policy of the crime vehicle. Admittedly the registration number of the vehicle is not mentioned in Ex.A7 for the reason that the vehicle is new one and

identity of the vehicle can be ascertained with engine and chassis numbers mentioned in Ex.A7. In Ex.A7 Registration mark and number of the

vehicle is mentioned as Ã¢â‚¬Å“NewÃ¢â‚¬. Engine number and chassis number are mentioned as Ã¢â‚¬Å“LXE 1059672 and KXE 670987Ã¢â‚¬ respectively. Since

the respondent No.3 has not challenged Ex.A7 and as the respondent No.3 has not filed any copy of insurance policy to prove that originally Ex.A7

was not issued by the respondent No.3, the court relied on Ex.A7 and comes to a conclusion that the engine and chassis number of the crime vehicle

are Ã¢â‚¬Å“{LXE 105972Ã¢â‚¬â€‹ and Ã¢â‚¬Å“KXE 670897Ã¢â‚¬â€‹. As seen from Ex.B1 returned cheque it was issued for two cover notes that is VCO 1614098, UCO

1614099. Ex.B3 is cancellation endorsement of policy. The court perused Ex.B3. As seen from Ex.B3 it is very clear that the policy was cancelled in

respect of vehicle bearing engine No.23689 and chassis number 65892 but not the policy issued under Ex.A7. The court comes to this conclusion as

engine and chassis numbers mentioned in Ex.B3 cancellation endorsement and in Ex.B4 certificate of posting receipt are different with that of engine

number and chassis number mentioned in Ex.A7 copy of policy. Therefore, from Ex.B3 and Ex.B4 it cannot be said that Ex.A7 policy was cancelled

and the owner was duly informed about the cancellation of Ex.A7 policy. If at all the respondent No.3 cancelled Ex.A7 policy and duly intimated the

same to the owner of the vehicle, the policy endorsement Ex.B3 and certificate of posting receipt Ex.B4 must contain the engine and chasis number

as mentioned in Ex.A7. But the Ex.B3 and B4 contain different engine and chassis numbers. There is no explanation to this from the side of the

respondent No.3. Further the respondent No.3 has not pleaded in the counter that the policy issued to the crime vehicle was duly cancelled and the

same was informed to the respondent No.3. In view of the difference in engine number and chassis number mentioned in Ex.B3 and B4 with that of

engine number and chassis number mentioned in Ex.A7 copy of policy, from the evidence of RW.1 and from Ex.B1 to B4 it cannot be said that the

respondent No.3 cancelled the Ex.A7 policy for non realization of premium amount and the respondent No.3 failed to establish that Ex.A7 policy was

cancelled and the same was duly informed to the owner. Hence the contention of the respondent No.3 that the respondent No.3 is not liable to pay the

compensation amount payable to the petitioners is not acceptedÃ¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬â€‹

Thus, on scrutiny of the evidence, more particularly, considering Ex.B. 3, which reflects that the policy was cancelled in respect of vehicle bearing

engine No. 23689 and chassis number 65892, but not in relation to the policy issued under Ex.A.7, the tribunal came to the conclusion that the

insurance company failed to establish that Ex.A.7, policy, was cancelled and rightly rejected the contention that the insurance company is not liable to

pay the compensation. The said findings of the tribunal, which are on proper appreciation of evidence brought on record, needs no interference by this

Court. Hence, the appeal filed by the insurance company is liable to be dismissed.

Coming to the cross-objections, although the claimants claimed that the deceased used to earn a sum of Rs.1,00,000/-per annum by doing agriculture,

except filing copy of pahani, Ex.A.8, showing that the deceased was owning agricultural land, no income proof was filed. Even the claimants failed to

establish that the deceased used to earn a sum of Rs.200/- per day by doing milk business. However, the income of the deceased assessed by the

tribunal at Rs.3,000/- per month, in the opinion of this Court, is meagre and needs enhancement. Considering the prevailing rate of minimum wages at

the relevant point of time, this Court is inclined to fix the monthly income of the deceased at Rs.4,000/- per month. Inasmuch as the deceased was

self-employed and aged about 32 years, as per the decision of the Apex Court in National Insurance Company Limited v. Pranay Sethi 2017(6) 170

(SC), 40% to the established income of the deceased needs to be added towards future prospects. By adding 40% to the income of the deceased, the

future monthly income of the deceased comes to Rs.5,600/-(Rs.4,000/- plus Rs.1,600/- being 40% thereof). Inasmuch as the dependants are five in

number, the tribunal ought to have deducted 1/4th towards personal expenses of the deceased but not 1/3rd. Therefore, by deducting 1/4th from

Rs.5,600/-, the net monthly contribution to the family comes to Rs.4,200/-which works out to Rs.50,400/- per annum. Since the deceased was 32 years

at the time of the accident, the appropriate multiplier is Ã¢â‚¬Ëœ16Ã¢â‚¬â„¢. By applying the multiplier Ã¢â‚¬Ëœ16Ã¢â‚¬â„¢, the loss of dependency comes to

Rs.8,06,400/-. That apart, as per the decision of the Apex Court in Pranay Sethi (supra), the claimants are entitled to Rs.77,000/- under the

conventional heads, but not Rs.20,000/- as was awarded by the tribunal. Thus, in all, the claimants are entitled for the total compensation of

Rs.8,83,400/-.

In the result, while dismissing the M.A.C.M.A. No.3934 of 2014 filed by the insurance company, the cross-objections filed by the claimants are

allowed enhancing the compensation from Rs.4,04,000/- to Rs.8,83,400/-. The enhanced compensation shall carry interest at 7.5% per annum till the

date of realization. Time to deposit the amount is two months. However, the claimants are directed to pay deficit court fee on the enhanced

compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.