***HON'BLE SRI JUSTICE BATTU DEVANAND**

+ M.A.C.M.A.No.1479 OF 2010

% 04.03.2020

The New India Assurance Company Limited,
Rep. by its Divisional Manager, Kurnool.

... Appellant.

Vs.

$ Shaik Hussain Bee W/o Moula Basha, Muslim,
Aged 45 years, Housewife, resident of
Chakarajuvemula Village, Dornipadu Mandal,
Kurnool District and 2 others.

... Respondents.

! Counsel for the petitioners : Sri Naresh Byrapaneni.

! Counsel for the Respondent Nos.1 & 2 : Sri G. Sravan Kumar.
! Counsel for the 3rd respondent : Sri A. Jaya Sankara Reddy.

< Gist:

> Head Note:

? Cases referred:

[1] 2000 ACJ 801
[2] 2006 ACJ 2010
[3] 2014 ACJ 1266
[4] 2017 ACJ 2608

HONOURABLE SRI JUSTICE BATTU DEVANAND

M.A.C.M.A.No.1479 of 2010

J U D G M E N T:

This Appeal arises under the Motor Vehicles Act, 1988, against the decree and order, dated 07.07.2009 in M.V.O.P.No.362 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the Appeal.

2) As per the averments of the claim petition, the petitioners 1 and 2 are the parents of one Shaik Ameer Basha (who will be hereinafter referred to as "*deceased*"). The 1st respondent is the owner of the auto bearing No.A.P.21-W-3775 and the 2nd respondent is its insurer. The deceased was the driver on the above auto being plied between Allagadda and Dornipadu. Accordingly, on 14.08.2005 the deceased took the auto for carrying passengers and in the evening time some unknown passengers hired the auto to go to Koilakuntla and they took the auto to the outskirts of Koilakuntla towards Owk road, beat the deceased with stones and caused his death and stolen away the auto. The petitioners further averred that the death of deceased took place during his employment under the 1st respondent, as a driver on the auto and the death took place due to the use of the vehicle and hence, the respondent Nos.1 and 2 are liable to pay the compensation. The petitioners

submit that the deceased was aged 20 years and was hale and healthy and as a driver he was getting income of Rs.3,000/- per month and hence due to his untimely death in the accident, the petitioners lost income source and put to sufferance and hence they claimed Rs.3 lakh as compensation.

3) The 1st respondent filed counter denying the averments made in the petition and contended that the auto bearing No.A.P.21-W-3775 was owned by him and it was insured with the 2nd respondent and the policy was in force as on the date of the accident, and hence he prayed to dismiss the petition against him.

4) The 2nd respondent filed its counter denying the averments made in the petition and contended that the deceased was taken to some distance from the auto and the unknown passengers pelted stones on him and murdered him and thereby there was no accident and hence the 2nd respondent is not liable to pay the compensation to the petitioners. The 2nd respondent further contended that the driver of the auto i.e., the deceased was not having valid driving licence and thereby the policy conditions are violated and the deceased was murdered by some unknown persons and since there is no accident took place involving the auto, the 2nd respondent is not liable to pay the compensation which is excessive. The 2nd respondent denied the avocation and income

of the deceased. Hence, it is prayed to dismiss the petition with costs.

5) On behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, RWs.1 to 4 were examined and Exs.B.1, B.2 and Exs.X.1 and X.2 were marked.

6) The Tribunal after hearing the arguments of the learned counsel for the petitioners and learned counsel for the respondents and considering the oral and documentary evidence available on record, allowed the claim application awarding total compensation of Rs.3,00,000/- along with interest at the rate of 7.5% per annum from the date of petition till 31.10.2006 and from 02.02.2008 till the date of deposit of the amount with costs by holding that the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

7) Aggrieved by the decree and order of the Tribunal, the 2nd respondent-Insurance Company in O.P. filed the present Appeal.

8) Heard, Sri Naresh Byrapuneni, learned counsel for the insurance company and Sri G. Sravan Kumar, learned counsel for the respondent Nos.1 and 2 and Sri A. Jaya Sankara Reddy, learned counsel for the 3rd respondent.

9) It is contended by Sri Naresh Byrapaneni, learned counsel for the Insurance Company that the deceased was murdered by some unknown persons and the death of the deceased is not caused by the accident to the vehicle and the murder of the deceased, as a driver, was not covered under the policy of Insurance. He further submits that though several grounds were raised in this appeal, there are mainly challenging the judgment of the Tribunal on the ground that without considering the evidence available on record in the proper perspective, the Tribunal erroneously fastened the liability on the Insurance Company.

10) Sri G. Sravan Kumar, learned counsel appearing for the petitioners would submit that the Tribunal after considering the facts and circumstances of the case and basing on the evidence available on record, awarded the compensation of Rs.3,00,000/- by holding that the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners and as such, there are no any merits in the appeal and prayed to dismiss the same.

11) As seen from the evidence of 1st respondent, who was examined as R.W.1, who deposed that in the month of July, 2005 he engaged the deceased Ameer Basha as driver on the Auto bearing No.A.P.21-W-3775 owned by him and the said Auto was being plied in between Allagadda and Dornipadu

Villages for carrying passengers on hire. He further deposed that on 14.08.2005 the deceased took the Auto from his house and in the evening time some unknown passengers hired the said Auto at Dornipadu to go to Koilakuntla and in the mid night took the Auto towards Owk Road and beat the Ameer Basha with stones and murdered him and stolen the Auto and on the next day when he came to know about the murder of Ameer Basha, he and others went to the scene and identified the dead body and Koilakuntla Police registered a case under Section 302 of the Indian Penal Code.

12) The Inspector of Police, Koilakuntla Police Station, who was examined as PW.2, deposed in his evidence that the deceased Shaik Ameer Basha was murdered by some unknown offenders by taking him in an Auto to the outskirts of Koilakuntla-Pedda Kottala Road. He further deposed that the witnesses, who were examined in the criminal case have deposed that he was murdered only for the purpose of doing theft of the Auto and since the Investigating Officer failed to trace out the culprits, no Charge sheet was filed. The certified copy of F.I.R. in Crime No.52 of 2005 of Koilakuntla Police Station, dated 15.08.2005, which was marked as Ex.A.1; certified copy of Inquest Report of Shaik Ameer Basha, dated 15.08.2005, which was marked as Ex.A.2; certified copy of Postmortem Report, which was marked as Ex.A.3; certified copy of Final Report, which was marked as Ex.A.4 coupled with the

evidence of PW.2 and RW.1, the entire evidence shows that the deceased was the driver on the Auto and he was taking some unknown passengers in the said Auto, took him to the outskirts of Koilakuntla with an intention to commit the theft of the said Auto, murdered the driver and the Auto which was committed theft was recovered after sometime.

13) The oral and documentary evidence adduced by the petitioners clearly proves that the deceased was murdered by some unknown persons with an intention to commit theft of the Auto, boarded the said Auto and took the auto being driven by the deceased to the outskirts of Koilakuntla and committed his murder. As such, though, the death of the deceased was not caused directly due to the occurrence of the accident by involvement of the Auto, the murder of the deceased was committed during the time when he was the driver on the Auto which was stolen by some unknown persons.

14) While dealing with an Appeal under the similar set offacts in **Rita Devi and others vs. New India Insurance Co. Ltd., and another**[1] the Hon'ble Apex Court has discussed and held as under:

The question, therefore, is can a murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where

[1] 2000 ACJ 801

death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

In Challis vs. London and South Western Railway Company (1905 2 Kings Bench 154), the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone willfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

> The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver; in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously.

In the case of Nisbet vs. Rayne & Burn (1910) 1 KB 689, where a cashier, while traveling in a railway to a colliery with a

large sum of money for the payment of his employers workmen, was robbed and murdered. The Court of Appeal held:

> That the murder was an accident from the standpoint of the person who suffered from it and that it arose out of an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmens Compensation Act 1906. In this case the Court followed its earlier judgment in the case of Challis (supra). In the case of Nisbet, the Court also observed that it is contended by the employer that this was not an accident within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word accident negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet.

The judgment of the Court of Appeal in Nisbets case was followed by the majority judgment by the House of Lords in the case of Board of Management of Trim Joint District School vs. Kelly (1914 AC 667).

Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that

on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.

Learned counsel for the respondents contended before us that since the Motor Vehicles Act has not defined the word death and the legal interpretations relied upon by us are with reference to definition of the word death in Workmens Compensation Act the same will not be applicable while interpreting the word death in Motor Vehicles Act because according to her, the objects of the two Acts are entirely different. She also contends on the facts of this case no proximity could be presumed between the murder of the driver and the stealing of the auto rickshaw. We are unable to accept this contention advanced on behalf of the respondents. We do not see how the object of the two Acts, namely, the Motor Vehicles Act and the Workmens Compensation Act are in any way different. In our opinion, the relevant object of both the Acts are to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the Workmens Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapter X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Section 167 of the Motor Vehicles Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmens Compensation Act or under the Motor Vehicles Act . A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence judicially accepted interpretation of the word death in Workmens Compensation Act is, in our opinion, applicable to the interpretation of the word death in the Motor Vehicles Act also.

In the case of Shivaji Dayanu Patil & Anr. vs. Vatschala Uttam More (1991 (3) SCC 530) this Court while pronouncing on the interpretation of Section 92 A of the Motor Vehicles Act, 1939 held as follows :

> .... Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.

In that case in regard to the contention of proximity between the accident and the explosion that took place this Court held:

> 36. This would show that as compared to the expression caused by, the expression arising out of has a wider connotation. The expression caused by was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression arising out of which indicates that for the purpose of awarding compensation under Section 92-A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression arising out of the use of a motor vehicle in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for

compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

15) Under the facts and circumstances of the present case and the evidence available on record, the Tribunal rightly held that the murder was committed during the course of employment of the deceased out of use of the vehicle and the respondent Nos.1 and 2, who are the owner and insurer of the Auto, are liable to pay the compensation to the petitioners.

16) With regard to the contention raised by the learned counsel for the Insurance Company that there was no driving licence in the name of the deceased and as such, he cannot be treated as a driver, as seen from the evidence of the Senior Assistant of the 2nd respondent-Insurance Company, who was examined as R.W.3 and he deposed that at the time of the incident, the deceased was about 18 years old and he had no driving licence including the Learner's licence and the 1st respondent by allowing him to drive the Auto violated the policy conditions.

17) To substantiate the contention that the deceased was not having valid driving licence, the 2nd respondent-Insurance Company has examined the Senior Assistant in the RTA Office, Nandyal as RW.4. As seen from the evidence of RW.4, he deposed that he verified the records in his office and found that

'Shaik Ameer Basha' S/o 'Moula Basha', resident of Chakarajuvemula, was not issued with any licence from their office and filed Ex.B.2 certificate. But as seen from the said certificate, it shows that originally a name 'Shaik Ameer Basha' S/o 'Sri Shaik Mulla Basha' was typed and thereafter it was corrected as son of 'Shaik Mulla Basha' without the initial of the issuing authority and thereby, it shows that the record in RTA Office, Nandyal was verified with wrong name and hence the Tribunal held that the certificate under Ex.B.2 seems to be not correct one and the 2nd respondent failed to prove that the deceased was not having valid driving licence as on the date of the incident.

18) On the other hand, PW.1 and RW.1 categorically deposed that the deceased was having valid driving licence to drive the passengers Auto which was taken away by the culprits when they committed his murder.

19) The 2nd respondent-Insurance Company by examining RW.4 and by filing Ex.B.2 tried to establish that no driving licence was issued from the office of RTA, Nandyal.

20) While dealing with the contentions of the parties on this aspect, it is appropriate to consider Section 9 of Motor Vehicles Act, 1988, which reads as hereunder:

Section 9 of the Motor Vehicles Act, 1988 deals with the grant of driving licence stated as follows:

(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority have jurisdiction in the area-

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

(3) .....

(4) .....

(5) .....

(6) .....

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence:

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority:

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good

and sufficient reason for his inability to obtain a duplicate copy of his former licence.

21) The above provision of law provides that the deceased can obtain driving licence from any RTA Office, having jurisdiction in which he ordinarily resides or carries on business or where he is receiving or has received instruction in driving a motor vehicle is situated. So, the evidence of R.W.4 that the deceased was not holding any valid licence for driving Auto involved in the incident as per the particulars available in the office of the RTA, Nandyal, is in no way helpful to the 2nd respondent to establish that the deceased was not holding valid driving licence for driving the Auto involved in the incident, because, the deceased can obtain driving licence, anywhere as provided under Section 9 of Motor Vehicles Act. In view of the oral and documentary evidence available on record, it can be safely conclude that the 2nd respondent-Insurance company failed to adduce any substantial evidence to establish that the deceased i.e., the driver of the Auto involved in the incident was not holding a valid driving licence. In view of the above provisions of Motor Vehicles Act, 1988, the evidence of RW.4 and the contents of Ex.B.2 are not sufficient to contend that the deceased was not holding any driving licence. The Tribunal had discussed the matter in a correct perspective and this Court does not find any basis to interfere with the same.

22) Learned counsel for the 2nd respondent-Insurance Company relied upon the decision in **Geeta Devi and another vs. Sanjeev Chowhan and another**[2] to substantiate their contention on the driving licence aspect. On perusing the same, I am of the opinion that there is no dispute with regard to the ratio laid down in the said judgment, but, with great respect I hold that, that judgment is not applicable to the facts and circumstance and evidence available on record in the present case.

23) To substantiate the contention of the 2nd respondent-Insurance Company with regard to the ownership of the Auto involved in the incident and coverage of the insurance policy which was marked as Ex.B.1, the 2nd respondent-Insurance Company examined its Senior Assistant as R.W.3 and he deposed that the father of the deceased purchased the Auto involved in the incident from Madhu Venkata Reddy and paid the first installment and thereby the deceased was not working under the 1st respondent as driver. Though, the R.W.2 deposed that the father of the deceased has purchased Auto from RW.1 and paid the first installment and the deceased was not the driver on the said Auto, no substantial evidence is produced to prove the said contention.

[2] 2006 ACJ 2010

24) As seen from the evidence of 1st respondent, who was examined as R.W.1, it shows that as on the date of the incident, he was the owner of the Auto as he purchased it from one Y. Sivalingam and later on 09.08.2005, the policy was transferred in his name and it was in force as on the date of the incident.

25) It is contended by the learned counsel for the 2nd respondent-Insurance Company that the transfer was not informed to the Insurance Company and the policy was not transferred in his name. As seen from the evidence of RW.2 and Ex.X.1-the attested copy of the Registration Certificate pertaining to the Auto involved in the issue and Ex.X.2-the permit, it appears that the Auto was transferred in the name of the 1st respondent from the name of V. Sivalingam on 04.08.2005 and the incident took place on 14.08.2005, as such as on the date of the incident, the 1st respondent was the owner of the Auto.

26) At this juncture, it is relevant to read Section 157 of the Motor Vehicles Act, 1988 which reads hereunder:

157. **Transfer of certificate of insurance**.—

> (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been

> transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.
>
> [Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]
>
> (2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

On reading of Section 157 of the Motor Vehicles Act, 1988, it provides that the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. In the present case Auto was transferred in the name of the 1st respondent on 04.08.2005 and the incident took place on 14.08.2005. As such, as per sub section 1 of Section 157 of the Act come into operation and it has to be held that the respondent Nos.1 and 2 being the insured and insurer are jointly and severally liable to pay the compensation.

27) The Hon'ble Apex Court in **Mallamma (dead) by LRs Vs. National Insurance Co. Ltd., & others**[3] while interpreting Section 157 of the Motor Vehicles Act, 1988 held as under:

> In view of the above discussion we are of the considered view that as on the date of accident, the

[3] 2014 ACJ 1266

> deceased workman was in the course of employment of Jeeva Rathna Setty in whose name the ownership of the vehicle stood transferred and the said vehicle was covered under a valid insurance policy, the High Court ought not have simply brushed aside the decision of the Commissioner fastening joint liability on the Insurance Company in the light of the deeming provision contained in Section 157 (1) of the M.V. Act.

28) In **Firdaus Vs. Oriental Insurance Co. Ltd., & others** [4] the Hon'ble Apex Court also held as under:

Section 157 of the Motor Vehicles Act, 1988 clinches the issue. Section 157 sub-section(1) contains the deeming provision that "the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of this transfer." Sub-section(1), Section 157 which is relevant is quoted as below:

> "157. Transfer of certificate of insurance –
>
> (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.
>
> [Explanation.- For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance]."

In view of the above, it is not necessary for us to give any concluded finding regarding ownership of the vehicle No.HR 2 G 1875 on the date of accident for the purpose of this case. In

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[4] 2017 ACJ 2608

either of the eventuality, i.e. whether defendant no.1 was the owner of the vehicle on the date of the accident, or defendant No.4 was the owner of the vehicle, the liability of Oriental Insurance Co. Ltd. continues and Workmen compensation Commissioner has rightly fastened the liability on the Insurance Company. The remand made by the High court to find out as to whether Parvez Khan was an employee of the defendant no.1 or not, was unnecessary.

29) For the foregoing reasons, this Court holds that the finding of the Tribunal that the murder of the deceased was committed during the course of his employment and out of the use of the Auto of the 1st respondent and the respondent Nos.1 and 2, who are owner and insurer of the said Auto, are liable to pay the compensation to the petitioners is basing on the evidence available on record and in accordance with law.

30) In the result, the appeal is dismissed confirming the decree and judgment, dated 07.07.2009 in M.V.O.P.No.362 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand closed.

BATTU DEVANAND, J

Date: 04.03.2020
PGR

Note: L.R. copy to be marked.