

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2724 of 2004

J U D G M E N T:

This appeal is filed by the appellant/sixth respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order, dated 20.10.1997, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-

II Additional District Judge, East Godavari at Rajahmundry, in O.P.No.861 of 1993, awarding compensation of Rs.1,90,000/-

2. Respondent Nos.1 to 3/petitioners filed the above O.P under Section 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules 1989 (for short 'the Rules'), claiming compensation of Rs.2,00,000/- on account of the death of Pappala Ganapahti (hereinafter referred to as 'the deceased') in a motor vehicle accident, that occurred on 13.02.1993.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 13.02.1993 at 2:00 p.m, while the deceased was travelling in the Lorry bearing No.ABB.1986 along with cloth bundles from Vemagiri and Rajahmundry side towards Lalacheruvu, the driver of the Van bearing No.AP.15T.919 drove the vehicle in rash and negligent manner, came in the opposite direction and dashed the lorry, in which the deceased was travelling. Both the vehicles collided and the deceased sustained crush injury. Immediately after the accident, the petitioner was shifted to Government Head Quarters Hospital, Rajahmundry for treatment. But, inspite of the treatment, he died in the Hospital. The deceased was aged about 25 years, doing cloth business and earning Rs.2,000/- p.m and he used to

contribute the entire income to his family. Petitioners are the wife, father and unmarried sister of the deceased. As the petitioners lost their dependency, the respondents being the drivers, owners and insurers of the van and lorry are jointly and severally liable to pay compensation.

5. Before the Tribunal, respondent Nos.1 to 4 remained *ex parte*.

6. The brief averments made in the counter, filed by the fifth respondent are as follows:

The fifth respondent put the petitioners to prove the manner of accident, age and income of the deceased and specifically stated that the accident occurred due to rash and negligent driving of the driver of the Van bearing No.AP.15T.919 and there is no negligence or contributory negligence on the part of the driver of the Lorry bearing No.ABB.1986 and the amount claimed by the petitioners is high and excessive and the third petitioner is not entitled to claim any compensation and put the petitioners to prove that the driver of the Van bearing No.AP.15T.919 was having valid driving license at the time of accident and finally prayed the Court to dismiss the petition.

7. The brief averments made in the counter, filed by the sixth respondent are as follows:

The sixth respondent put the petitioners to prove the manner of accident, age and income of the deceased and stated that the petition filed by the petitioners is not maintainable and also put the petitioners to prove that there was negligence or contributory negligence on the part of the second respondent resulting in the accident. Further, the deceased was a gratuitous passenger, who was travelling in a goods vehicle. Thus, the owner of the vehicle

violated the provisions of the Act, and therefore respondent is not liable to pay any compensation to the petitioners.

8. Basing on the pleadings, the Tribunal framed four issues and to substantiate the claim, the petitioners got examined PWs.1 & 2 and got marked Exs.A1 to A3 on their behalf. On behalf of the contesting respondents, no oral evidence was adduced, but Ex.B1 got marked.

9. After considering the oral and documentary evidence, the Tribunal held that the accident took place due to rash and negligent driving of both the drivers of van and lorry and awarded compensation of Rs.1,90,000/- along with interest at 12% p.a to the petitioners against all the respondents.

10. Being aggrieved by the award passed by the Tribunal, the sixth respondent preferred the present appeal.

11. The learned counsel appearing for the appellant/sixth respondent argued that the compensation awarded by the Tribunal is highly excessive and exorbitant; that the Tribunal failed to see that the deceased is an unauthorised passenger and is not entitled for any compensation; that the Tribunal also not clarified the respective share and responsibility of respondent No.5 in the awarded amount, and prayed the Court to allow the appeal.

12. Appeal against respondent No.1 is dismissed for default vide C.O dated 16.09.2011, while Appeal against respondent Nos.2 to 7 is dismissed for default vide C.O dated 31.10.2003.

13. On the other hand, the learned counsel for respondent No.5 argued that the Tribunal after considering the evidence on record, held that there was contributory negligence on the part of the drivers of the Van and Lorry and awarded compensation and that

order needs no interference and prayed the Court to dismiss the appeal.

14. Having regard to the submissions made by the learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant/respondent is entitled to set aside the order dated 20.10.1997 passed by the Tribunal or not?
2. Whether the compensation granted by the Tribunal is just and reasonable or not?

15. **POINTS 1 & 2:** A perusal of the award passed by the Tribunal shows that after considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of drivers of both the vehicles and they are responsible for the accident and awarded compensation of Rs.1,90,000/- against all the respondents. The contention of the appellant is that the deceased was travelling as an unauthorised passenger in the goods vehicle and further, the Tribunal also not specified about the share of compensation payable by the appellant in the award.

16. Admittedly, the appellant has not produced any oral evidence to show that the deceased was an unauthorised passenger. On the other hand, the evidence on record shows that the deceased was travelling in the lorry along with cloth bundles and he is doing cloth business and earning Rs.2,000/- per month. After considering the evidence of PWs.1 & 2, the Tribunal awarded compensation to the petitioners, who are the wife, father and unmarried sister.

17. A perusal of the order and decree also shows that the Tribunal nodoubt passed the award against all the respondents i.e., respondent Nos.1 to 6 jointly and severally. All respondents are

none other than the drivers, owners and insurers of the van and lorry. The compensation awarded by the Tribunal is Rs.1,90,000/-. Therefore, the driver, owner and Insurance Company of the Van bearing No.AP.15T.919 have to share half and the driver, owner and Insurance Company of the Lorry bearing No.ABB.1986 have to share another half of the compensation. Likewise, they have to share the interest also equally.

18. With the above observation, the Appeal is disposed of. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: .12.2014

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