

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1194 OF 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the appellant/respondent No.2 challenging the judgment and award, dated 18.01.2008, passed in M.V.O.P.No.515 of 1998 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Guntur (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 18.04.1998, Murikipudi Narasimha Rao @ China Narasimha Rao and others were engaged as coolies in the Lorry bearing No.ADM 6948 for loading and unloading purpose. After unloading of bricks at Ramireddypet, Narasaraopet, the petitioner and others were proceeding to Nakarikallu in the lorry. When the lorry reached near Ravipadu Village, the driver of the lorry had driven the same in a rash and negligent manner and lost control due to which, the lorry turned turtle. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom the Station House Officer, Narasaraopet Rural Police Station registered a case in Crime No.252 of 1998 for the offence under Section 304-A I.P.C. Due to accident, China Narasimha Rao (hereinafter referred to as 'the deceased') sustained injuries and died. By the time of accident, the deceased was aged about 16 years and used to earn Rs.2,000/- per month. The petitioners are dependants on the income of the deceased. The lorry bearing No.ADM 6948, which belongs to respondent No.1, was insured with respondent No.2 - Insurance Company with effect from 23.10.1997 to 22.10.1998. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,50,000/- to the petitioners.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed written statement denying all the averments made in the petition *inter alia* contending that by the time of accident, the driver of the lorry was not having valid and effective driving licence. It

is further contended that by the time of accident, the petitioner and others were travelling in the lorry as unauthorised passengers. The respondent No.1 had violated the terms and conditions of the policy hence, There is no obligation on the part of this respondent to indemnify the liability of respondent No.1. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to negligent driving of the driver of the lorry bearing No. ADM 6948?
2. Whether the petitioners are entitled for the compensation, if so, to what amount?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of respondent No.2, RW.1 was examined and Ex.B.1 was marked.

7. On appraisal of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased and allowed the petition by awarding compensation of Rs.1,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred the present appeal.

9. Heard Sri R.K.Suri, the learned counsel for respondent No.2 and Sri G.L.Nageswara Rao, the learned counsel for the petitioners.

10. The contention of the learned counsel for respondent No.2 is three fold: (1) The driver of the lorry was not having valid and effective driving licence as on the date of accident; (2) By the time of accident, the deceased and others were travelling in the lorry as unauthorised passengers thereby, the respondent No.1 had violated the terms and conditions of Ex.B.1 – Policy and that aspect was not rightly considered by the Tribunal; and (3) The Tribunal fastened the liability on respondent No.2 on erroneous grounds.

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11. Per contra, the learned counsel for the petitioners submitted that the terms and conditions of policy cover the risk of coolies engaged in the lorry. He further submitted that respondent No.1 had not violated the terms and conditions of the policy and that aspect was rightly considered by the Tribunal.

12. Basing on the rival contentions, the point that arises for determination in this appeal is:

Whether respondent No.1 had violated the terms and conditions of policy so as to absolve the liability of respondent No.2 or not?

Point:

13. Basing on the oral testimony of PWs.1 and 2 and Exs.A.1 to A.5, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry, which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. I am fully agreeing with the finding recorded by the Tribunal. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased.

14. A perusal of the record reveals that the Tribunal has taken the income of the deceased as Rs.15,000/- per annum even though the petition is filed under Section 166 of the Act. The fact remains that as on the date of accident, the deceased was engaged as a coolie in the lorry and that aspect was not considered by the Tribunal. However, the claimants have not filed any appeal or cross objections challenging the quantum of compensation. In the absence of appeal or cross objections, it is not permissible for this Court to enhance the compensation. The Tribunal arrived at a conclusion that the petitioners are entitled to an amount of Rs.1,55,000/-. However, the Tribunal restricted the compensation amount to Rs.1,50,000/- only. Viewed from

any angle, I am of the considered view that the Tribunal has awarded just and reasonable compensation.

15. The crucial question that falls for consideration is “Whether respondent No.1 had violated the terms and conditions of the policy as contended by learned counsel for respondent No.2 or not?”

16. The oral testimony of RW.1 coupled with Ex.B.1 clearly reveals that the lorry was insured with respondent No.2 – Insurance Company as on the date of accident. Respondent No.2 has taken a specific plea in the written statement that by the time of accident, the deceased and others were travelling as unauthorised passengers in the lorry. The oral and the documentary evidence available on record clinchingly establishes that by the time of accident, the deceased was travelling in the lorry for the purpose of loading and unloading of the bricks. In the cross-examination, RW.1 stated that as per their investigation, the deceased was employed as a coolie in the lorry for the purpose of loading and unloading. The stand taken by the petitioners is supported by the oral testimony of RW.1. I am fully agreeing with the finding of the Tribunal that by the time of accident, the deceased was travelling in the lorry as a coolie. Ex.B.1 – Policy covers the risk of six employees engaged in the lorry. In view of the recitals of Ex.B.1 – Policy, I am unable to accede to the contention of the learned counsel for respondent No.2 that Ex.B.1 – Policy does not cover the risk of employees. The Tribunal has rightly considered the recitals of Ex.B.1 – Policy and arrived at a conclusion that respondent No.2 has to indemnify the liability of respondent No.1. In the light of the foregoing discussion, this Court is of the view that respondent No.1 has not violated the terms and conditions of the policy so as to absolve the liability of respondent No.2. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal and the appeal lacks merits and bonafides.

17. In the result, the Appeal is dismissed. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 20.04.2015

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