

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.525 of 2005

JUDGMENT:

The petitioners who are the parents of the deceased-Madarapu Srinivasulu, preferred the instant appeal aggrieved by the order dated 16.12.2004 in O.P.No.338 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole (for short, 'the Tribunal'), whereby and whereunder a sum of Rs.1,22,000/- was granted as compensation against the 1st respondent-owner of the vehicle while dismissing the claim against the 2nd respondent-insurer of the vehicle, on the ground that the tractor was used for other than the purpose of agricultural operations.

2. The appellants herein are the petitioners in the original petition before the Tribunal, while respondent Nos.1 and 2, who are the owner and insurer of the tractor and trailer bearing Nos.AP-27-C-4253 and 4254 respectively, were respondent Nos.1 and 2 respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 23.05.2001, the deceased-Madarapu Srinivasulu along with others was engaged as a coolie on a tractor and trailer bearing Nos.AP-27-C-4253 and 4254, belonging to the 1st respondent for loading and unloading the bricks. While returning, on Lingasamudram main road along with coolies in the trailer after unloading the bricks at village, since the driver of the tractor drove it in a rash and negligent manner, the deceased fell down from the trailer and the wheel ran over him and he succumbed to injuries while he was being shifted to the Hospital at Valetivaripalem. Therefore, the petitioners sought a sum of Rs.2,00,000/- as compensation. The deceased died in unmarried status, having laid the claim under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondent Nos.1 and 2 who are owner and insurer of the tractor and trailer respectively.

5. The 1st respondent-owner of the vehicle remained *ex parte* before the Tribunal. The 2nd respondent-insurance company resisted the claim contending that the tractor and trailer was used for commercial purpose and not for agricultural purpose and, thus, there was violation of conditions of the policy. Therefore, no liability can be fastened on it and it is only the 1st respondent, who is liable to pay compensation.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the 2nd respondent, RW.1 was examined and Ex.B.1-policy was marked.

7. The Tribunal on issue No.1, held in favour of the petitioners observing that the death of the deceased occurred due to rash and negligent driving of the driver of the tractor and trailer. However, on issue No.2, while determining compensation at Rs.1,20,000/- by applying multiplier '15', further granted Rs.2,000/- towards funeral expenses making it a total sum of Rs.1,22,000/- as compensation against the 1st respondent alone, while dismissing the claim against the 2nd respondent on the ground that the tractor was used for commercial purpose, but not for the purpose of agricultural operations.

8. It is the said order which is under challenge, in the instant appeal preferred contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record let in by the petitioners and on the date of accident, the 1st respondent has used his tractor and trailer for his personal purpose of loading bricks, but not for commercial purpose and, therefore, sought to set aside the award so far as dismissal against respondent No.2 is concerned and to fasten liability on the 2nd respondent.

9. As seen from the grounds of appeal, there is no prayer for enhancement of compensation awarded by the Tribunal. Therefore, the question involved is only to the extent of whether the order exonerating the insurance company can be sustained.

10. Heard Sri G.V.L. Murthy, learned counsel for appellants. None appears for the 2nd respondent-insurance company. Despite service of notice, no representation on

behalf of the 1st respondent-owner of the vehicle.

11. The learned counsel for the appellants contends that the tractor was used for agricultural purpose, since on the date of accident the 1st respondent used the tractor and trailer for loading and unloading bricks for his personal purpose and, therefore, it cannot be construed that the tractor and trailer were used on that particular day for the purpose other than agricultural use and, therefore, sought to allow the appeal.

12. A perusal of Ex.A.1 makes it abundantly clear that the tractor and trailer was used for loading and unloading bricks and there is absolutely no recital at all that the bricks were taken for the personal purpose of the owner that too for construction of at least farmhouse at his agricultural field. In the absence of the same, it is difficult to construe that the tractor and trailer were used for the agricultural purpose. When the oral evidence of PW.1 is perused, who is the 1st petitioner, he does not specifically mention that the vehicle was used for agricultural purpose. No doubt, he denied a suggestion made by the learned counsel for the insurance company before the Tribunal that the owner of the tractor insured the vehicle for agricultural purpose and the deceased was not competent to travel in the tractor and that the 2nd respondent is not liable to pay compensation as the tractor was insured only for agricultural purpose. But, that would not in any way support the case of the petitioners to claim compensation against the 2nd respondent-insurance company. This apart, one Cherukupalli Prabhakara Rao-eye witness was examined as PW.2 by the petitioners, even sought in his chief-examination that they unloaded three trucks of bricks in Kondapuram to the relatives of tractor owner. That itself would belie the stand of the petitioners that the tractor was used for the personal purpose of the owner himself.

13. The insurance company has examined one of its officials by name P. Subba Rao as RW.1, who was working as A.O. in the local branch. His evidence shows that use of accident vehicle for commercial purpose was contrary to policy conditions and Ex.B.1 is the policy copy marked through him. In his cross-examination, he stated "it is true that the crime vehicle was sent for rent purpose on the date of accident for using the same for commercial purpose". Thus, even the answer elicited through RW.1, would completely cut at the root of the case of the petitioners in claiming compensation against the 2nd respondent-insurance

company. Thus, there is no merit in the appeal and the appeal is liable to dismissed.

14. In the result, the appeal is dismissed. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 10.02.2015.

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