

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.321 OF 2006

JUDGMENT:

The 2nd respondent – M/s National Insurance Company Limited preferred the instant appeal under Section 173 of Motor Vehicles Act, 1988, aggrieved by the order and decree, dated

30-07-2005, in M.V.O.P. No.1010 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge (Fast Track Court), Guntur (for short 'the Tribunal'), whereby and whereunder, the Tribunal awarded Rs.2,24,000/-(Rupees two lakhs and twenty four thousand) as compensation as against the claim of Rs.3,00,000/-(Rupees three lakhs) laid under Sections 163-A and 166 of Motor Vehicles Act, 1988 (for short 'the Act') and under Rules 455 and 476 of Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules').

2. The appellant herein is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 4, who are wife, daughter, son and father of deceased – Palle Srinivasa Reddy, respectively, are petitioners, respectively, and respondent No.5, who is owner of lorry bearing registration No.AIK 1976, is respondent No.1.

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

4. The facts, in brief, are that at early hours of 01-10-2002 i.e., at about 1.30 A.M., the deceased – Palle Srinivasa Reddy, whose wife, children and father are petitioners herein, was proceeding on his motor cycle (Hero-honda) bearing registration No.AP 24C 5141 from Dharmavaram village to Lakshmi Srinivasa Bore Well office at Durgi town, during which time, he was hit by the back-door of a lorry bearing registration No.AIK 1976. He succumbed to injuries while he

was being shifted to hospital by one Thota Giri and another. The petitioners claimed that the said accident took place due to wrong parking of the lorry on middle of the road without switching on the parking lights and as the driver has not taken any precautionary regulations as mentioned in the Rules while stopping the said lorry to avert taking place of the accident. According to them, a case was registered by the concerned police in Crime No.80 of 2002 under Section 304-A IPC against the driver of the lorry. They claiming that the deceased was working as Commission Agent with Lakshmi Srinivasa Bore-Wells, besides being an agriculturist, earning Rs.5,000/- per month sought a sum of Rs.3,00,000/- as compensation.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company opposed the claim by filing written statement, raising various pleas and also the plea that the 1st respondent being the driver of the accident lorry, intentionally handed it over to a person, who was not having valid and effective driving license. It is also stated that the death of deceased occurred due to own negligent driving and, finally, sought to dismiss the claim.

7 . Based on the pleadings, the Tribunal framed three issues to fix the responsibility for the accident. During inquiry before the Tribunal, the 1st petitioner besides examining herself as PW.1 has examined an eye-witness to the occurrence, as PW.2 and marked Exs.A-1 to A-6. On behalf of the 2nd respondent, no witnesses were examined and no documents were filed.

8 . On issue No.1, the Tribunal having found from the evidence of PW.2, supported by Exs.A-1 to A-6 that the accident occurred due to rash and negligent driving of the driver of lorry, and even the Station House Officer, Durgi Police Station, registered the crime against the lorry driver and booked a petty Case No.47 of 2002 under Sections 121, 117, 187 and 190 read with 77 of the Act, held the issue in favour of the petitioners. On issue No.2, the Tribunal

taking the income of deceased at Rs.1,500/- per month, deducted 1/3rd therefrom and applying multiplier '17', arrived at Rs.2,04,000/- towards loss of dependency, besides awarding a sum of Rs.10,000/- towards loss of estate and Rs.10,000/- towards loss of consortium and, thus, granted a total compensation of Rs.2,24,000/- with interest at 7% per annum thereon.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the Insurance Company, contending in the grounds, that the order and decree of the Tribunal are not in accordance with law and facts of the case. It is also stated that the Tribunal has not properly appreciated the evidence on record and went wrong in concluding that the stationary truck was responsible for the death of motor cyclist, though, the motor cyclist run the risk by riding the motor cycle in the dark hours on high way. It is also stated that the Tribunal deviated in appreciating the evidence by believing the invented documents and evidence, thus, circumstantial evidence clearly shows that it is a case of self-negligence accident, for which, none can be blamed except the deceased and, therefore, sought to set aside the award.

10. Heard Sri Nisaruddin Ahmed Jeddy, learned counsel for the appellant – Insurance Company. Though, respondent Nos.1 to 4, amongst whom, respondent Nos.2 and 3 are minors represented by respondent No.1, were served with notices, none appears for them. Respondent No.5, though, it is endorsed as 'served', since he remained *ex parte* before the Tribunal, his absence in the instant appeal would not make any difference.

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11. The learned counsel for the appellant contends that the petitioners laid the claim under Sections 163-A and 166 of the Act instead of opting either of the provisions and the order of the Tribunal does not disclose under which of the provisions the claim was entertained and, therefore, to set aside the order and decree.

Yet another contention raised by the learned counsel for the appellant is,

that since the deceased came from behind driving his motor cycle and hit the lorry from behind and the accident occurred resulting in death of the deceased on account of his own negligence and, thereby, contributory negligence has to be culled out and, accordingly, to apportion the compensation at 50% each.

12. Turning to the first point and the argument advanced by the learned counsel for the appellant is concerned, in the grounds of appeal, no specific ground is raised touching the said aspect. Further, at this distance of time, since the accident has occurred in the year 2002, and the OP was disposed of on 30-07-2005, and the present appeal has been pending for the past slightly more than nine years, it would be an exercise in futility to probe into the aspect whether the claim can be entertained either under the provisions of Section 163-A or 166 of the Act, and even to remand the matter on technical ground.

13. Touching the contributory negligence, a perusal of documentary evidence would show that the lorry was parked on the black top road which was specifically mentioned in the first information report marked as Ex.A-1. The very fact that the lorry was loaded with Casuarinas and the rear door was kept open and tied with rope, and the portion which came into contact with the deceased was the angular portion of the rear door which came out, are all sufficient enough to hold that there was negligence only on the part of the driver of lorry in parking the lorry on the black top portion of the road instead of parking it giving clear and unobstructed passage for passing of vehicles coming from behind. Therefore, even, the contributory negligence, as sought to be culled out by the learned counsel for the appellant cannot be acceded to, as the manner in which the accident has occurred would clearly rule out the negligence on the part of the deceased. Therefore, on this point also, there is no merit in the appeal and, consequently, the appeal stands 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

April 08, 2015.

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