

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.580 of 2006

JUDGMENT:

Aggrieved by the order dated 18.11.2005 in M.V.O.P.No.926 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Vijayawada (for short, 'the Tribunal'), whereby and whereunder, the Tribunal while granting compensation of Rs.3,55,316/- as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one G.James (deceased) in a road accident, exonerated the Insurance Company-3rd respondent from liability to pay the said compensation and directing the 1st and 2nd respondents, who are the driver and owner of the lorry, in which the deceased was travelling, to pay jointly and severally, the petitioners preferred the instant appeal seeking to fasten liability on the Insurance Company-3rd respondent.

2. The appellants herein are the petitioners, while the respondent Nos.1 to 3, who are the driver, owner and insurer of the accident vehicle respectively, were respondents in the original petition.

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

4. The facts in brief are that on 16.04.2000, the said James, employed in VTPS, Ibrahimpatnam as Mazdoor, drawing a salary of Rs.5,000/- per month, boarded a lorry bearing registration No.ADB 4518 at Ibrahimpatnam to go to Vijayawada and at about 4-30 a.m., when the lorry reached Union Petrol Bunk near Gollapudi, since the 1st respondent driven it in a rash and negligent manner dashed a stationed lorry bearing registration No.AP 37 2039, loaded with iron sheets from its behind, due to which, said James died instantly. A crime was also registered against the 1st respondent by the concerned Station House Officer. Therefore, the petitioners, who are the wife, son and parents of the deceased, sought compensation from the respondent Nos.1 to 3, who are the driver, owner and insurer of the lorry in which the deceased was travelling.

5. Respondent No.1-driver of the lorry filed counter contending that he drove the lorry slowly and in a cautious manner, but the other lorry was parked without any lights on and when a vehicle with lights came opposite him, he could not notice a parked lorry, and, therefore, the accident had taken place, and he was no way responsible for the accident. Respondent No.2-owner of the lorry remained *ex parte*. Respondent No.3-Insurance Company opposed the claim raising various pleas. The specific plea put forth by the 3rd respondent is, that the deceased had travelled in the lorry as a gratuitous passenger, and, hence, it cannot be made liable as it accounted for violation of terms and conditions of the policy, and, therefore, sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the deceased Gorrumutchu James died in the motor vehicle accident on 16.4.2000 due to the rash and negligent driving of lorry No.ADB 4518 driven by R1?

2. What is the correct age and income of the deceased by the date of accident?

3. Whether the petitioners are entitled to the compensation as prayed for? If so from whom?

To what relief?"

7. During enquiry, the 1st petitioner examined herself as P.W.1 besides examining A.Subba Rao as P.W.2 and marked Exs.A.1 to A.8; whereas, on behalf of respondent No.3, no witness was examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner finding that due to rash and negligent driving of the driver of the lorry, the accident had occurred. On issue No.2, the Tribunal tendered finding that the deceased was earning Rs.2,401-50 ps. basing on the evidence of P.W.2. On issue No.3, the Tribunal, having noticed the contents of Ex.A.7-inquest report and Ex.A.1-F.I.R., disbelieved the evidence of P.W.1 that her husband James was travelling with rice bags and other household articles in the vehicle, since there was no whisper either in the inquest report or in the charge

sheet, besides, no tangible evidence being let in by the petitioners, arrived at the conclusion that he was an unauthorized passenger. The Tribunal, therefore, having considered the decisions relied on by both sides referred to in paragraphs-11 to 13 of the order acceded to the submission of the 3rd respondent and held that the 3rd respondent cannot be fastened with any liability in view of the violation of terms and conditions of the policy, since the deceased was a midway passenger allowed to travel in a goods vehicle, and, thus, while granting a sum of Rs.3,55,316/- as compensation, fastened liability against the respondent Nos.1 and 2.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal misdirected itself in arriving at the conclusion that the deceased James was a gratuitous passenger by ignoring the fact that he was thrown out of the vehicle and died soon after the accident. It is further stated that the Tribunal ought to have held since the deceased died under the wheels of the lorry and ought to have held that the Insurance Company is also liable to pay compensation. The appellant, therefore, sought to enhance the compensation stating that the compensation granted by the Tribunal was meager.

10. Heard Sri N.Subba Rao, learned counsel for the appellants-claimants, and Sri Naresh Byrapaneni, learned Standing Counsel for the 3rd respondent-Insurance Company. Despite service of notice on respondent Nos.1 and 2, none appears for them.

11. A perusal of the inquest report would make it abundantly clear that the deceased boarded the lorry as a midway passenger with an intention to proceed to Vijayawada and the accident had occurred near Gollapudi in the manner in which it was projected. Even the stand taken by the petitioners that the deceased was travelling with a rice bag was found to be false, in regard to which, a definite finding was recorded by the Tribunal on appreciation of evidence on record, more particularly, inquest report and charge sheet, which were marked as Exs.A.7 and A.8 respectively. In such an event, the deceased has to be construed as an unauthorized passenger, as he boarded the lorry midway at Ibrahimpatnam. Therefore, the finding recorded by the Tribunal construing the deceased as an unauthorized passenger, since well reasoned and well appreciated, does not suffer any legal infirmity warranting interference.

12. Therefore, the instant appeal is dismissed confirming the order and decree

passed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

23rd March, 2015

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