

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.245 of 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 02.04.2008 passed in M.V.O.P.No.353 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional Judge, Kurnool.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

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

4 On 19.09.2005, one E. Subba Rayudu was engaged as hamali for loading and unloading of stones in the lorry bearing No.AP 21 U 7576. When the lorry reached near Nagireddy Baddi, Bethamcherla, the driver of the lorry drove the same in a rash and negligent manner and lost control over it 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, Bethemchrla police station registered a case in Cr.No.151 of 2005 under sections 337, 338 and 304-A IPC. In the said accident, Subba Rayudu (hereinafter referred to as 'the deceased') sustained multiple injuries on various parts of his body and died on the spot. By the date of accident, the deceased was aged 40 years and maintained the family by attending cooli work. The petitioners are dependents on the income of the deceased. The lorry bearing No.AP 21 U 7576, which belongs to the first respondent was insured with the second respondent with effect from 16.09.2004 to 15.09.2005. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3.00 lakhs to the petitioners.

5 First respondent remained ex parte. Second respondent filed counter denying the material averments made in the petition inter *alia* contending that by the time of accident the deceased was travelling in the lorry as an unauthorised passenger. The first respondent had violated the terms and conditions of the insurance policy by permitting the deceased and others to travel in the lorry as unauthorised passengers. The insurance policy does not cover the risk of the unauthorised passengers. It is further contended that the amount of

compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident was occurred due to rash and negligent driving of the driver of the lorry bearing No.AP 21 U 7576?
- ii. Whether the 1st respondent violated the terms and conditions of the insurance policy?
- iii. Whether the petitioner is sic. petitioners are entitled to any compensation from the respondent and if so, to what extent?
- iv. To what relief?

7 During the course of trial, on behalf of the petitioners P.Ws.1 to 3 were examined and Exs.A.1 to A.5 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B.1 and B.2 were marked.

8 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of driver of the lorry bearing No.AP 21 U 7576, which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.1,85,500/-, directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent filed the present appeal.

9 Heard Sri Nasaruddin Ahmed Jeddy, the learned counsel for the second respondent and Sri K.Rathangapani Reddy, the learned counsel for the petitioners.

10 The contention of the learned counsel for the second respondent is two fold viz., 1) The Tribunal wrongly fastened the liability on the second respondent even though the first respondent had violated the terms and conditions of the insurance policy, and 2) The amount of compensation awarded by the Tribunal under various heads is on higher side.

11 *Per contra*, the learned counsel for the petitioners submitted that basing on the oral testimony of P.Ws.1 to 3, the Tribunal has rightly arrived at the conclusion that by the time of accident the deceased was travelling in the lorry

as cooli. He further submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

12 Now the points that fall for determination in this appeal are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the first respondent had violated the terms and conditions of the insurance policy so as to absolve the liability of the second respondent?

PointNo.1:

13 As per the finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the lorry bearing No.AP 21 U 7576, which resulted in the death of the deceased. By examining P.Ws.1 to 3 and marking Exs.A.1 to A.5, the petitioners clinchingly established that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 21 U 7576, which resulted in the death of the deceased. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. There is no much dispute between the parties with regard to the manner of accident and factum of death of the deceased.

14 By the date of death, the deceased was aged 40 years. Taking into consideration the age of the deceased, the Tribunal has rightly taken the multiplier 11. Basing on the oral and documentary evidence available on record, the Tribunal has rightly arrived at a conclusion that the deceased may earn Rs.2,400/- p.m. and deducted $\frac{1}{3}^{\text{rd}}$ towards his personal expenses. The Tribunal arrived at a conclusion that the loss of dependency would come to Rs.1,76,000/- (Rs.1,600/- X 12 X 11). The Tribunal also rightly awarded Rs.9,500/- under non-conventional heads and accordingly awarded an amount of Rs.1,85,500/- as compensation to the petitioners. The petitioners have not filed any appeal questioning the amount of compensation awarded by the Tribunal. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the second respondent that the amount of compensation awarded by the Tribunal is on higher side.

POINT No.2:

15 The second respondent has taken a specific plea in the counter that by the time of accident, the deceased was travelling in the lorry as an unauthorised passenger. The fact remains that R.W.1 was not an eyewitness to the accident. The second respondent placed reliance on the paper publication Ex.B.2 to establish that the deceased was travelling in the lorry as unauthorised passenger. However, in Ex.B.2 it is mentioned that on the date of accident, the deceased went to quarry work. The oral testimony of P.Ws.1 to 3 coupled with Ex.B.2 clearly reveals that by the time of accident, the deceased was travelling in the lorry for the purpose of loading and unloading. The finding of the Tribunal that by the time of accident the deceased was travelling in the lorry as hamali for the purpose of loading and unloading is fully supported by the oral and documentary evidence available on record. There are no grounds much less valid grounds to upset the finding of the Tribunal on this aspect.

16 The oral testimony of R.W.1 coupled with Ex.B.1 clearly reveals that the lorry bearing No.AP 21 U 7576, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Viewed from any angle, the first respondent had not violated the terms and conditions of the insurance policy. Therefore, the second respondent has to indemnify the liability of the first respondent. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeal lacks merits and bonafides.

17 Accordingly, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petition if any pending in this miscellaneous appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 28th April, 2015.

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