

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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C.M.A.No. 2527 OF 2004

Between:

M/s United India Insurance Co. Ltd represented by its Branch Manager

... Appellant/ Respondent No. 2

And

M. Kannemma , W/o late Chiranjeevulu and others

... Respondents

DATE OF JUDGEMENT PRONOUNCED: 16-07-2015

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SUBMITTED FOR APPROVAL:

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HON'BLE SMT JUSTICE ANIS

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment?

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HON’BLE SMT JUSTICE ANIS

CMA No. 2527 OF 2004

J U D G M E N T

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This appeal is filed by the appellant-Insurance
Company/respondent No.2, under Section 173 of the Motor Vehicles

Act, 1988 (for short 'the Act'), aggrieved by the award dated 5.4.2004 passed by the Chairman, Motor Accident Claims Tribunal –cum- IV Additional District Judge, Tirupathi, in M.V.O.P.No. 246 of 2000, awarding compensation of Rs. 6,35,600/-.

2. The first respondent herein/petitioner filed the above O.P. under Section 166 (1) (c) of the Act, claiming compensation of Rs. 4,00,000/- on account of death of Chiranjeevulu (hereinafter referred to as 'the deceased'), in a motor vehicle accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition filed by the first respondent/petitioner are that she is the wife of the deceased and on 7.1.2000 at about 11.00 p.m, the deceased went to sugar factory in a tractor bearing No. AP 03 C 9297 with a load of sugarcane of Sri K. Chakrapani from Padiri village and the tractor was stationed in the cane yard of the sugar factory awaiting for its serial to unload the sugarcane on the night of 7.1.2000, the deceased slept on the back of the trailer bearing registration No. AP 03 E 9411 of the tractor bearing No. AP 03 C 9145 and at about 11 .00 PM when a call was given to unload the sugarcane, the driver of the tractor with its trailer with a load of sugarcane without taking due care and caution reversed the tractor rashly and negligently and the right wheel of the tractor ran over the body of the deceased while he was sleeping on the back of the tractor and died on the spot. Then a case was registered in Crime No. 3 of 2000 of Nindra Police Station. The deceased was hale and healthy prior to the accident and he was 32 years old and was working as a labourer and commission agent and earning Rs. 4,000/- per month and has been contributing to petitioners who are dependents on him. The driver of the tractor and trailer committed the accident during the course of his employment while discharging his duties under his employer first respondent. The vehicle of the first respondent is insured with second respondent who indemnified the first respondent for all risks and both the respondents

are jointly and severally liable to pay compensation.

5. The first respondent died during the pendency of main OP and that his legal heirs are added as R3 to R5 to contest the OP and they all remained *ex-parte*. The second respondent-Insurance Company filed written statement stating that the respondent does not admit the relationship between the petitioners and deceased and the petitioners have to prove that they are the only legal heirs of the deceased. It further averred that the deceased slept on the back of the tractor without intimating the same to the driver of the first respondent and there was negligence in not intimating the same to the driver and the petitioners have claimed compensation excessively and urged for dismissal of the petition.

6. Basing on the pleadings, the Tribunal framed four issues and to substantiate the claim, the first respondent got examined as PW-1 and examined PWs 2 & 3 in support of the case and got marked Exs. A1 to A4 on her behalf. On behalf of the contesting appellant-Insurance Company no oral evidence was adduced but got marked Ex. B1 Insurance Policy.

7. The Tribunal after considering the oral and documentary evidence on record, held that the accident occurred due to rash and negligent driving of the driver of the tractor and awarded an amount of Rs. 4,00,000/- with interest at 9% per annum as compensation payable by the appellant herein and respondent Nos.3 to 5 therein.

8. Aggrieved by the order of the Tribunal, the appellant/second respondent preferred the present appeal.

9. The main contention of the learned counsel for the appellant is that there was no rash and negligent driving on the part of the driver of the first respondent and due to fault of the deceased that he has not informed the driver that he was sleeping on the back of the tractor, the accident occurred, as such there was contributory negligence and this aspect was not considered by the Tribunal. He also argued that the Tribunal erred in awarding an amount of Rs. 1,22,400/-

towards loss of annual income of the deceased by considering the income of the deceased in goats business at Rs. 900/- per month. He further argued that the Tribunal erred in granting an amount of Rs. 20,000/- towards loss of amenities of life and also an amount of Rs. 15,000/- towards hope of expectation of life as the same are excessive and not granted in accordance with law. Further, the rate of interest awarded is highly excessive and prayed the Court to reduce the rate of interest.

10. On the other hand, the learned counsel for the claimants argued that after considering the oral and documentary evidence available on record, the Tribunal awarded reasonable compensation and rightly held that the appellant and respondent Nos. 3 to 5 therein are liable to pay compensation to the petitioners and the said finding of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for both parties, the only point, which is to be decided in this appeal is whether the appellant had made out any case to set aside the award passed by the Tribunal?

12. POINT:

A perusal of the record shows that the Tribunal after considering the evidence of PW-3 coupled with the documentary evidence Exs. A1 and A2 held that the accident occurred due to rash and negligent driving of the driver of the Tractor bearing No. AP 03 C 9145 by its driver. The learned counsel for the appellant contended that the Tribunal has not considered the fact that the deceased has not informed the driver of the first respondent that he slept on the back of the tractor and to prove the same the insurance company neither examined driver of the tractor nor the owner of the tractor. Further, the Insurance Company also not produced any contra evidence except filing the insurance policy. Therefore, the Tribunal rightly awarded compensation of Rs. 4,00,000/- to the petitioners. The other contention of the learned counsel for the appellant is that the Tribunal

awarded 9% interest, which is huge and excessive. Therefore, the rate of interest awarded by the Tribunal at 9% is reduced to 7.5% in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and Others V. Ahmedabad Municipal Transport Service*** and ***Rebeka Minz and others v. Divisional Manager, United India Insurance Company Limited and another.***

13. With the above said observation, the appeal is allowed in part. There shall be no order as to costs. Miscellaneous Petitions, pending if any, shall stand closed.

_____ **ANIS, J**

Date: 16.07.2015

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