

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.508 of 2006

JUDGMENT:

Aggrieved of the order dated 06.09.2005 in M.V.O.P. No.1340 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional District Judge (Fast Track Court), Guntur at Tenali (for short, 'the Tribunal'), whereby and whereunder an amount of Rs.94,500/- with interest at 7.5% per annum, as against the claim for Rs.2,00,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Kola Rataiah in a road accident, more particularly, dismissed the claim against the 2nd respondent-Oriental Insurance Company on the ground that the deceased was travelling in a goods vehicle and he was a labourer and he had to be construed as a gratuitous passenger but not a coolie working under the owner of lorry, the instant appeal is preferred.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the 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 06.11.2002 at about 6-00 p.m., the deceased Kola Rataiah, along with other passengers, was proceeding in the lorry belonging to respondent No.1 bearing registration No.AP 5T 3399 from Kolluru to Karlapalem village for unloading bricks from the lorry and when it reached Vellaturu village, since the driver of the lorry drove it in a rash and negligent manner at high speed and without observing that the motorcycle was coming in opposite direction and to avert collision with the motorcycle, suddenly taken turn, on account of which, it turned upside down, resulting in grievous injuries to the said Rataiah and who succumbed to the injuries while undergoing treatment in Government Hospital, Tenali. The Station House Officer, Battiprolu Police Station also registered the said accident in Crime No.59 of 2002 against the driver of the lorry. The petitioners claiming that the said Rataiah was 49 years old and earning Rs.100/- per day,

sought Rs.2,00,000/- from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle.

5. Respondent No.1 filed written statement. While denying the allegations mentioned in the petition, contends that there was collision between the two vehicles, and, therefore, non-joinder of the owner and insurer of the opposite vehicle makes the claim bad and since it was insured with respondent No.2, respondent No.2 alone is liable to pay compensation. Respondent No.2 opposed the claim contending that there was collusion between respondent No.1 and respondent No.2. Respondent No.2 also filed additional written statement taking a specific plea that the deceased was travelling in a lorry bearing registration No.AP 5T 3399 as a gratuitous passenger, and, thus, there has been violation of terms and conditions of the permit, and, therefore, respondent No.2 is not liable to pay the compensation.

6. Basing on the said pleadings, the Tribunal framed the following issues:

- "1. Whether the accident took place due to the rash and negligent driving of the driver of lorry AP 5T 3399?
2. Whether the petitioners are entitled for the compensation, if so, to what amount and from which of the respondents?
3. To what relief?"

Subsequent to the filing of additional written statement, the following additional issue was also framed by the Tribunal:

"Whether the deceased is gratuitous passenger? If so, whether 2nd respondent is not liable to pay compensation?"

7. During enquiry, the 2nd petitioner examined himself as P.W.1 besides examining one Somula Veeramma, an eyewitness, as P.W.2 and marked Exs.A.1 to A.5; whereas, on behalf of respondent No.2, one K.S.N.Prasad, Assistant Administrative Officer from the local branch, was examined as R.W.1 and marked Exs.B.1 to B.4.

8. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal determined the compensation at 94,500/- taking the annual income of the deceased as Rs.15,000/- and deducting 1/3rd therefrom towards personal expenses of the deceased and arrived at Rs.10,000/- towards contribution of the deceased to the

family and taking the age of the deceased as 55 years, applied multiplier '8' and arrived the loss of dependency at Rs.80,000/-. Besides the same, the Tribunal also granted Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium to the 1st petitioner and Rs.2,500/- towards loss of estate, and, thus, a total sum of Rs.94,500/-. However, on additional issue, as to the liability of the 2nd respondent-Insurance Company, the Tribunal, placing reliance on the decision of the Hon'ble Apex Court in **National Insurance Company Limited vs. Bommithi Subbayamma**, extracting the observations therein contained in paragraph Nos.14 to 22 and 26 of the order under challenge, observed that the insured failed to produce any record showing the names of the employees in connection with unloading of goods in vehicles, and the amount of wages or salary and other earnings paid to such employees, and, making relevant observations, negated the stand of the petitioners holding that the deceased was a gratuitous passenger and not entitled to compensation from the 2nd respondent-Insurance Company.

9. Aggrieved of the aforesaid order, the instant appeal is preferred by the petitioners contending in the grounds of appeal that the deceased was engaged as a labourer for loading and unloading bricks, and, in such an event, he cannot be equated with that of the gratuitous passenger and the Tribunal was not right in recording such a finding. Concerning the quantum of compensation, it is contended that the deceased was earning not less than Rs.3,000/- per month and the Tribunal was wrong in taking the income of the deceased at Rs.15,000/- per annum, and, therefore, sought to enhance the compensation.

10. Heard Sri N.Subba Rao, learned counsel for the appellants, and Sri G.Vishweshwar Reddy, learned Standing Counsel for the 2nd respondent-Insurance Company. Though, the 1st respondent was served with notice, none appears for him.

11. Learned counsel for the appellants submits that the deceased cannot be construed as gratuitous passenger and he has to be construed as third party under the provisions of Section 147 of the Act, and, he was, in fact, engaged as a labourer for unloading bricks and when viewed in that angle, certainly, the risk of the deceased was covered under the provisions of Section 147 of the Act, and, therefore, sought to fasten liability and also to enhance the compensation as the compensation granted by the Tribunal was meager. On the other hand, it is the

submission of the learned counsel for the 2nd respondent-Insurance Company that risk of the deceased was not covered, and, in fact, he was not an employee under the owner of the lorry and as per the amended provisions of Section 147 of the Act, only the owner of the goods or his authorized legal representative are entitled to claim compensation, and, in fact, even as per the policy, risk of the deceased is not covered, and, therefore, sought to maintain the order passed by the Tribunal.

12. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties.

13. Two points arise for consideration, first being, whether the petitioners are entitled to enhancement of compensation? second; whether the order under challenge exonerating the 2nd respondent-Insurance Company from liability to pay compensation can be sustained?

Point No.1:

14. So far as the compensation determined by the Tribunal is concerned, the Tribunal has taken Rs.15,000/- per annum as the notional income by making observation that the petitioners failed to produce any acceptable evidence with regard to the means of the deceased despite taking stand of the deceased and earning Rs.100/- per day by unloading the bricks. It is true, there is no proof as regards the income of the deceased filed by the petitioners for substantiating their stand. However, so far as the multiplier '8' applied by the Tribunal is concerned, in view of the decision of the Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**, relevant multiplier is '11' for the age group of persons aged between 51 and 55 years, and, therefore, the loss of dependency works out to Rs.1,10,000/- (Rs.10,000/- x '11'). Concerning conventional amounts, a sum of Rs.50,000/- is granted in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**.

15. Thus, the compensation granted by the Tribunal at Rs.94,500/- is enhanced to Rs.1,60,000/- (Rupees one lakh and sixty thousand) and the same is granted with interest at 7.5% per annum on the entire amount from the date of petition till realization. The petitioners shall apportion their respective shares of compensation as ordered by the Tribunal.

Point No.2:

16. Concerning the liability of the Insurance Company, admittedly, the deceased was not employer of the owner of the vehicle and the documentary evidence makes it abundantly clear that the deceased and two others were employed for unloading bricks in the said lorry from Kolluru to Karlapalem village. Thus, it is clear that he was not employed on the lorry. That has been the reason the Tribunal construed the deceased as the gratuitous passenger basing on the legal principle laid down in **Bommithi Subbayamma's** case (1 supra). The Tribunal has dealt with the relevant aspects in paragraphs 23 to 26 of the order under challenge. Absolutely the finding recorded by the Tribunal does not suffer from any legal infirmity in construing the deceased as gratuitous passenger but not a third party as pleaded by the petitioners, and, therefore, there is no merit in the instant appeal to fasten liability on the 2nd respondent-Insurance Company.

17. Accordingly, the instant appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation alone, as indicated above, and confirming the same in all other aspects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

10th March, 2015

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