

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.1194 of 2010

JUDGMENT:

This appeal is filed by the 2nd respondent-insurance company challenging the judgment and award dated 12.06.2009 passed in O.P.No.221 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Ongole.

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

3. The facts leading to filing the present appeal, in brief, are as follows:

On the date of accident, the deceased was proceeding to Hyderabad from Ongole while driving the bus bearing No.AP/9/X/6159 as a driver of the said vehicle. When the bus reached near Yacharam village, the driver of the lorry bearing No.ATT 6254 driven the same in a rash and negligent manner and dashed the bus from opposite direction. Due to the said accident, the deceased sustained grievous injuries on various parts of the body. Immediately after the accident, the deceased was shifted to Osmania General Hospital, wherein he succumbed to injuries while undergoing treatment. The Station House Officer, Yacharam, registered a case in Crime No.30 of 2007 under Section 304-A IPC against the driver of the lorry. By the time of death, the deceased was aged about 24 years and used to earn Rs.6,000/- per month as a driver. Petitioner is the mother of the deceased. Respondent No.1 is the owner of the lorry bearing No.ATT 6254, which was insured with the second respondent company at the time of accident. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioners. Hence, the petitioner filed the claim petition claiming compensation of Rs.6,00,000/- against

both the respondents.

4. The first and third respondents remained *ex parte*. Second respondent filed written statement denying all the averments made in the claim petition *inter alia* contending that the driver of the bus, without following the road rules, dashed against the lorry bearing No.ATT 6254. The driver of the bus alone was responsible for the accident. There was no negligence on the part of the driver of the lorry. The driver of the lorry was not having valid and effective driving licence as on the date of accident. Therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed in so far as this respondent is concerned.

5. Fourth respondent filed counter admitting the manner of accident as pleaded by the petitioners, *inter alia*, contending that the accident occurred due to the rash and negligent driving of the driver of the lorry and there was no negligence on the part of the driver of the bus. After completion of investigation, the police filed charge sheet against the driver of the lorry in Cr.No.30 of 2007 under Sections 304-A, 337 and 338 IPC. The driver of the bus was not having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed in so far as this respondent is concerned.

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

1. Whether the accident occurred due to the rash and negligent driving of the lorry ATT 6254 by its driver?
2. Whether the petitioners are entitled to the compensation? If so, to what amount and from whom?

3. To what relief?

7. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B1 to B3 were marked. The second respondent was examined as C.W.1.

8. Basing on the evidence oral and documentary and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry and allowed the petition in part by awarding a compensation of Rs.3,78,000/-.

9. Being aggrieved by the judgment and award of the Tribunal, the second respondent insurance company preferred the present appeal.

10. Heard Sri A.Gopalakrishnamacharyulu, the learned counsel for the appellant/respondent, Sri Madhava Rao Nalluri, learned counsel for the first respondent and Sri Kota Subba Rao, learned standing counsel for NIACL for 4th respondent.

11. It is the contention of the learned counsel for the second respondent/appellant that the Tribunal wrongly fastened the liability on the second respondent even though the first respondent had violated the terms and conditions of the policy. Learned counsel for the claimant submitted that the second respondent failed to establish that the first respondent had violated the terms and conditions of the policy. He further submitted that the Tribunal rightly fastened the liability on the second respondent.

12. Now, the point that arises for consideration in this appeal is:

Whether the first respondent had violated the terms and conditions of Ex.B1 policy so as to absolve its liability?

13. Learned counsel for the second respondent/appellant fairly submitted that he is not questioning the quantum of compensation awarded by the Tribunal. Admittedly, the claimants have not filed any appeal challenging the quantum of compensation awarded by the Tribunal. Hence, I am not inclined to express any opinion with regard to the quantum of compensation awarded by the Tribunal. As seen from the testimony of R.Ws.1 and 2, the lorry bearing No.ATT 6254 was insured with R2 company under Ex.B1 policy. The oral testimony of P.W.1 coupled with Ex.B1 policy clearly reveals that the policy was in force as on the date of accident. The second respondent has taken a specific plea in the counter that at the time of accident, the driver of the lorry was not having licence to drive the heavy goods vehicle. As per the testimony of R.W.1, at the time of accident, the driver of the lorry was having licence to drive the light motor vehicle. A perusal of Ex.B2 clearly reveals that the driver of the lorry was having driving licence to drive the light motor vehicle non-transport. The second respondent did not choose to examine any person to establish that the lorry involved in the accident was heavy goods vehicle. The fact remains that the driver the lorry was not disqualified to obtain the driving licence. No material was placed before the Tribunal to establish that the vehicle in question was a heavy goods vehicle. As per the finding of the Tribunal, the first respondent had not violated the terms and conditions of the policy. Out of the same accident, some other claimants have filed O.P.No.271 of 2007 and O.P.No.270 of 2007. In those two cases, the Tribunal fastened the liability to the extent of 75% on the lorry driver and 25% on the bus driver. New India Assurance Co.Ltd., who is respondent No.4 in O.P.No.271 of 2007 and 270 of 2007 have filed M.A.C.M.A.Nos.535 and 536 of 2009 respectively. The appellant herein had not filed appeal challenging the judgment and award in O.P.Nos.271 of 2007 and 270 of 2007 on the ground that the Tribunal has wrongly fastened the liability on it. Today, this Court disposed of M.A.C.M.A.No.535 of 2009 holding that

the second respondent herein has to indemnify the liability of the owner of the lorry.

14. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATT 6254 belonging to the first respondent, which resulted in the death of the deceased. The point is answered accordingly.

15. In view of the finding of this Court on the above point, the first respondent being the owner of the lorry bearing No.ATT 6254 is vicariously liable for the wrongful acts committed by his driver. The lorry bearing No.ATT 6254, which belongs to the first respondent was validly insured with the second respondent as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. In view of the said finding, I am unable to accept to the contention of the learned counsel for the appellant that the owner of the lorry bearing No.ATT 6254 violated the terms and conditions of the policy so as to absorb its liability. Having regard to the facts and circumstances of the case, I am of the considered view that it is not a fit case to interfere with well considered judgment and award passed by the Tribunal.

16. In the result, the appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

4th February, 2015

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