

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.602 OF 2006

JUDGMENT:

The second respondent-M/s. United India Insurance Company Limited in M.V.O.P.No.231 of 2002 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District and Sessions Judge (F.T.C.), Medak at Sangareddy, is the present appellant. Aggrieved by the order dated 22.01.2005, whereby and whereunder a sum of Rs.2,61,000/- was granted as compensation, though, the Tribunal determined total compensation of Rs.2,90,000/-, it waived 10% from the said amount i.e., Rs.29,000/- towards the contributory negligence of the deceased, the instant appeal is preferred.

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

3. The facts in brief are that on 12.04.2001, the deceased-Yelamanti Gouramma, W/o.Bichappa, went to the field of one Yesaiah situated in Survey No.183/Ly at Edakulapally for labour work for cutting the sugarcane. When it was raining, the labourers from the field ran and some of them sat inside the lorry, whereas the deceased went underneath the lorry and sat there. The driver of the lorry, without observing the said Gouramma sitting beneath the lorry, started the lorry, due to which she came under the rear wheels and succumbed to the injuries while she was being shifted to the Government Hospital, Zaheerabad. The petitioners, being the husband and children of the deceased respectively, stating that the deceased was earning Rs.3,000/- per month and contributing her earnings for sustenance of the family, sought a sum of Rs.3,00,000/- as compensation.

4. Respondent Nos.1 and 2 are the owner and insurer of the vehicle respectively. The first respondent, appeared before the Tribunal, filed counter and resisted the claim alleging that the lorry was insured with the second respondent and the second respondent is liable to pay the compensation.

5. The second respondent opposed the claim stating that due to negligence on the part of the deceased, the accident has occurred and the driver is not under any obligation to check any person or persons sitting under the lorry. On that ground, the second respondent sought to dismiss the claim petition.

6. The Tribunal framed the following issues.

“(1) Whether the alleged accident occurred due to the rash and negligent driving of the Lorry bearing No.ABT 981 and the Yelamanti Gouramma died in the said accident?

2. Whether the claimant is entitled for compensation, if so, at what quantum?

(3) To what relief?”

7. In order to decide the controversy, during the enquiry, the first petitioner examined himself as P.W.1 besides examining an eye witness as P.W.2 and marked Exs.A1 to A6. On behalf of the insurance company, no witness was examined but the complaint lodged by one Narsimulu was marked as Ex.B1.

8. The Tribunal, on appraisal of evidence of P.W.2 supported by Exs.A1 and A2, which are certified copies of First Information Report along with complaint and charge sheet, which show the lorry driver as accused, observed that all of a sudden, the driver of the lorry was not supposed to start the lorry without seeing the persons who sat near the rear wheels and that, that negligence occasioned the accident and thereby, found issue No.1 in favour of the petitioners.

9. On issue No.2, the Tribunal has taken the age of the deceased as 36 years on the date of accident and has taken the income at Rs.2,250/- per month and after deducting 1/3rd therefrom, granted compensation of Rs.2,66,580/- towards loss of dependency. Besides the said amount, the Tribunal has also granted Rs.15,000/- towards consortium, Rs.9,000/- towards funeral and transportation charges and thus, determined the amount as Rs.2,90,000/-. The Tribunal has also recorded a finding that the contribution of the deceased to the accident was at 10% and thereby, deducted 10% from Rs.2,90,000/- and granted compensation of Rs.2,61,000/- with interest @ 7.5% per annum apportioning the respective shares of the petitioners.

10. It is the aforementioned, which is under challenge in the instant appeal mainly on the ground that the driver was not obligated to perform his duty by

checking underneath the lorry or beside the lorry and the deceased herself negligently sat under the lorry and thereby, contributed to the accident and the Tribunal was not right in finding the rash and negligence on the part of the driver of the lorry. The second ground is that the Tribunal, without there being any legally acceptable evidence, taken the income of the deceased at Rs.2,250/- per month instead of following Schedule II of the Motor Vehicles Act, 1988 and prays to set aside the order and decree passed by the Tribunal.

11. Heard Sri A.Ramakrishna Reddy, learned counsel for the appellant-Insurance Company. No representation on behalf of respondent Nos.1 to 4. The fifth respondent is served with notice but none appears on his behalf.

12. The only question that arises for consideration is whether there was any negligence on the part of the driver of the lorry.

13. The circumstance that the labourers who were working in the sugarcane field, when it started raining, some of them got inside the cabin of the lorry, whereas the deceased and another sat underneath the lorry for shelter is sufficient enough to infer that the lorry driver was not supposed to move the lorry without observing as to how many labourers sat inside and how many were absent. Therefore, the finding recorded by the Tribunal that there was negligence on the part of the driver in moving the vehicle without checking up who sat nearby the lorry or underneath the lorry cannot be faulted with. Even otherwise, the Tribunal has recorded a finding that there is contribution by the deceased to the extent of 10% to the accident. Therefore, there is no merit in the submission of the learned counsel for the insurance company.

14. Coming to the compensation determined by the Tribunal, basing on the evidence of P.W.1 that the deceased was earning Rs.100/- per day, it has taken the daily wage at Rs.75/- per day and worked out monthly income at Rs.2,250/- and determined compensation by applying relevant multiplier taking the age of the deceased as 36 years. Therefore, even the compensation determined by the Tribunal deducting 10% towards the contributory negligence of the deceased cannot be faulted with. Hence, there is no merit in the appeal.

15. Accordingly, the appeal is dismissed.

There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

1st April 2015.

RRB