

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 2778 OF 2004

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JUDGMENT:

This appeal is filed by the appellant/second respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 04.12.2003 passed by the Chairman, Motor Accidents Claims Tribunal-cum-

V Additional Chief Judge, City Civil Court, Hyderabad, in O.P.No.1963 of 2001.

2. The claimants filed the above O.P under Section 166 of the Act, claiming compensation of Rs.2,75,000/- on account of the death of the deceased Gopal in a motor vehicle accident.

3. The appellant/insurance company was arrayed as the second respondent, while the respondents 1 and 2 as the petitioners and the third respondent as the first respondent and the fourth respondent as the third respondent in the O.P. before the Tribunal.

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

5. The brief averments made in the petition are as follows:

On 08.08.2001, after attending some agricultural work and selling some vegetables in Jagtial town, while the deceased was returning home, at about 1.30 p.m., a lorry bearing No.ADB 9812 belonging to first respondent came in a rash and negligent manner and dashed the deceased, as a result of which he fell down and became unconscious. Then, the deceased was shifted to Government Hospital, Jagtial, where he died while undergoing treatment. The wife of the deceased gave a complaint to the police, which was registered as a case in Crime No.163 of 2001.

The petitioners stated that the deceased was hale and healthy before the accident and used to earn Rs.5,000/- per month and also used to contribute his entire earnings to the family.

It is further stated that the first respondent being the owner and the second respondent being the insurer of the crime vehicle, are jointly and severally liable to pay compensation to the petitioners.

6. The first respondent remained *ex parte* before the Tribunal.

7. The brief averments made in the counter filed by the second respondent before the Tribunal are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the deceased. The respondent stated that the driver of the offending vehicle was not having a valid driving licence and prayed the Court to dismiss the petition.

8. The third respondent filed counter before the Tribunal admitting the occurrence of the accident and claiming a share in the compensation being the mother of the deceased.

9. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioners examined PWs 1 and 2 and got marked Exs.A.1 to A.5. On behalf of the second respondent, no oral evidence was adduced, but got marked the copy of insurance policy as Ex.B.1.

10. The Tribunal, after considering the oral and documentary evidence, held that the accident was caused due to rash and negligent driving of the driver of the first respondent and awarded compensation of Rs.1,89,000/- along with interest at 9% per annum including an amount of Rs.50,000/- awarded to the third respondent.

11. Aggrieved by the award passed by the Tribunal, the second respondent-insurance company preferred the present appeal.

12. The learned counsel for the appellant/insurance company argued that the Tribunal has not considered the evidence properly and also the relationship of the petitioners with the deceased, is not proved, and therefore, prayed the Court to allow the appeal by setting aside the award passed by the Tribunal.

13. On the other hand, the learned counsel for the respondents/claimants argued that the Tribunal, after considering the evidence on record, having held that the petitioners are the wife and daughter of the deceased and the third

respondent is the mother of the deceased, granted a just and reasonable compensation and the said finding of the Tribunal needs no interference, and prayed the Court to dismiss the appeal.

14. Having regard to the submissions made by both the learned counsel, the point that arises for consideration is:

Whether the appellant/insurance company has made out any case to set aside the award dated 04.12.2003 passed by the Tribunal in O.P.No.1963 of 2001?

15. **Point:**

There is no dispute that the accident had occurred due to rash and negligent driving of the driver of the lorry bearing No.ADB 9812 belongs to the first respondent and that the said lorry was insured with the appellant herein under Ex.B.1.

16. The only contention of the appellant is that the relationship of the petitioners with the deceased is not proved. A perusal of the counter filed by the third respondent, who is the mother of the deceased, clearly shows that the petitioners are the wife and daughter of the deceased and she also claimed a share in the compensation being the mother. The Tribunal, after considering the evidence on record, rightly held that the first petitioner is the wife, the second petitioner is the daughter and the third respondent is the mother of the deceased, and awarded a reasonable compensation of Rs.1,89,000/- along with interest at 9% per annum. Further, the appellant-insurance company failed to prove that the petitioners are not the legal heirs of the deceased Gopal. Therefore, the finding of the Tribunal in passing the award needs no interference.

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

(ANIS, J)

27.10.2015

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