

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 631 OF 2005

Judgment:

The National Insurance Company Limited, which is the second respondent in MVOP No. 495 of 2000, preferred the instant appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order, dated 13.09.2004, passed in MVOP No.495 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur, whereby and whereunder a sum of Rs.1,68,000/- is granted with interest at 9% p.a., as against the claim laid for Rs.2,00,000/-, under Section 163-A of the Act read with Rule 455 of the Rules made there under.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. Facts, in brief, are that on 24.02.2000, at about 4.00 AM, one Gaddagunti Venkateswarlu (deceased herein) and Pandilla Peri Reddy were engaged by Bode Narasimha Rao of Kolluru, Bellamkonda Mandal, who purchased stock of hayrick at Karalapadu village, for loading and unloading the hayrick on the tractor bearing No.AP-37N-9916 and Trolley bearing No.AP-37V-9501 belonging to the first respondent. They both loaded the stock of hayrick into the trolley. The tractor and trolley was driven by one Gudala Abhiramaiah. The deceased was sitting on the back of the driver's seat. When the tractor reached Venkataramayya mitta, located in between Manne

Sultanpalem and Emmajigudem, since the driver had driven it in a rash and negligent manner while encountering the said mita, the tractor went back and hit the trolley, during which process the deceased, who sat behind the driver, was sandwiched between the tractor and trolley, as a result of crush injury he sustained, his death occurred instantly. The petitioners claiming that the deceased was an agriculturist and used to earn Rs.3,000/- per month claimed a total sum of Rs.2,00,000/- towards compensation from the respondents 1 and 2.

4. The first respondent remained *ex parte*. The second respondent opposed the claim contending that the deceased himself was negligent in taking place of the accident, that the driver was not possessing valid, subsisting driving license at relevant time. Therefore, sought to dismiss the claim petition with costs.

5. The Tribunal, in order to adjudicate upon the controversy, framed three issues. During enquiry, the first petitioner examined herself as PW.1 and marked Exs.A1 to A5. On behalf of the second respondent – Insurance Company, one D. Ravi Kumar, an official from its local branch office, was examined as RW.1 and marked Exs.B1 and B2 to substantiate the stand of the second respondent with regard to violation of terms and conditions of the policy.

6. The Tribunal, having elaborately discussed the evidence on record, answered issue No.1 in favour of the petitioners while observing that there was no rebuttal evidence on behalf of

the second respondent – Insurance Company.

7. On issue No.2, the Tribunal has taken the annual income of the deceased at Rs.15,000/- per annum, deducted 1/3rd towards his personal expenses and contribution to the family at Rs.10,000/-, applied multiplier '16' and granted a sum of Rs.1,60,000/- besides granting Rs.5,000/- towards consortium, Rs.3,000/- towards funeral expenses and, thus, a total sum of Rs.1,68,000/- was granted.

8. Having got aggrieved, the Insurance Company preferred the instant appeal mainly contending that, the deceased, evidently since sat behind the driver of the tractor, which is clearly prohibited under law, has contributed for taking place of the accident. Second ground is, that the driver did not possess valid and effective driving license, as such, the insured violated the terms and conditions of the policy.

9. Heard Sri T. Ramulu, learned counsel for the appellant and Sri Ch. Ravindra Babu, learned counsel for the respondents 1 to 5. Despite service of notice on respondent No.6, none appears for respondent No.6.

10. During the course of arguments, learned counsel for the appellant submits that the ground relating to violation of conditions of policy on account of failure to produce valid and effective driving license to drive the tractor is not pressed. Concerning the contributory negligence, it is according to him that *ex facie* the documentary evidence would reveal that the deceased was sitting behind the driver on the very same seat

and the law is well settled that in such an event the contribution for taking place of the accident has to be assessed and in the instant case at least 10% contributory negligence has to be attributed to the deceased and, therefore, sought to reduce the compensation to the extent of 10%.

11. Learned counsel for the respondents while contending that the compensation awarded by the Tribunal itself was very meagre, not just and adequate , but ultimately concedes for reduction of compensation by 10% towards contributory negligence of the deceased.

12. In that view of the matter, nothing is required to probe further except deducting 10% of compensation awarded by the Tribunal, the balance, which works out to Rs.1,51,200/-. Thus, the compensation is reduced from Rs.1,68,000/- to Rs.1,51,200/-, but in all other respects the order of the Tribunal is confirmed including interest granted by the Tribunal, but on the compensation amount of Rs.1,51,200/- only.

13. Accordingly, the MACMA is partly allowed to the extent as mentioned above. There shall be no order as to costs.

14. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 27.02.2015

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