

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.16 OF 2013

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 17.9.2012 passed in O.P.No.162 of 2007 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda at Suryapet, wherein and whereby an amount of Rs.3,77,000/- was awarded to the claimants as against the claim of Rs.4,00,000/-.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: On 26.2.2007, Kondameedi Papaiah and others were engaged as loading and unloading coolies in the lorry bearing No.AP 24V 6440. They loaded the sand in the lorry at Kanchikacharla village of Krishna District and were proceeding to Hyderabad, where the sand had to be unloaded. When the lorry reached the outskirts of Akupamula village, the driver of the lorry had driven the same in a rash and negligent manner and dashed against a Tipper bearing No.AP 16-TU 2262. Due to the accident, Kondameedi Paiah (hereinafter referred to as, the deceased) and cleaner of the lorry died on the spot. The Station House Officer, Munagala Police Station registered a case in Crime No.32 of 2007 under Section 304-A IPC against the driver of the lorry bearing No.AP 24V 6440 (hereinafter referred to as, the crime vehicle). By the time of the accident, the deceased was aged about 38 years and earning Rs.3,000/- per month. The first petitioner is the wife, and petitioner Nos.2, 3 and 4 are the children of the deceased. The petitioners are dependants on the income of the deceased. The crime vehicle belongs to the first respondent was insured with the second

respondent with effect from 23.3.2007 to 22.3.2008 vide policy No.052000/31/06/01/00001932. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent remained *ex parte*. The second respondent filed counter opposing the claim of the petitioners, *inter alia*, contending that there was no rashness or negligence on the part of the driver of the crime vehicle. In fact the accident occurred due to the rash and negligent driving of the driver of the Tipper bearing No.AP 16 TU 2262. Therefore, the petition is not maintainable for non-impleading of the driver, owner and insurer of the Tipper. By the time of the accident, the deceased and others were travelling in the crime vehicle as unauthorized passengers. The first respondent had violated the terms and conditions of the policy; therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. Hence, the petition is liable to be dismissed.

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

1. Whether the deceased Kondameedi Papaiah was died in the motor vehicle accident, if so, whether the accident was occurred due to the rash and negligent driving by the driver of lorry bearing No.AP 24V 6440?
2. Whether the petitioners are entitled to any compensation, if so, to what amount?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

7. On appraising the oral, documentary evidence 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 crime vehicle which resulted in the death of Kondameedi Papaiah, and allowed the petition in part by awarding compensation of Rs.3,77,000/- with interest at 6% per annum from the date of petition till realisation. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent preferred the present appeal.

8. The contentions of the learned counsel for the second respondent—Insurance Company are as follows:

- (1) the Tribunal failed to consider that there was contributory negligence on the part of the driver of the Tipper bearing No.AP 16 TU 2262;
- (2) the Tribunal committed grave error while placing reliance on the testimony of P.W.2 and Exs.A1 and A6; and
- (3) the Tribunal ought to have dismissed the petition as there was no employer-employee relationship between the first respondent and the deceased.

In spite of service of notice, petitioners-claimants did not choose to appear; hence, I am inclined to dispose of the appeal on merits in the absence of the claimants.

9. Now the points that arise for consideration in this appeal are:

- (1) Whether the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 24V 6440?
- (2) Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent?
- (3) Whether the deceased was working as a labourer on the lorry bearing No.AP 24V 6440 at the relevant point of time?

Point No.1:

10. The oral testimony of P.W.1 is no way helpful to the petitioners to establish the manner of the accident. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 24V 6440 (crime vehicle). In the cross-examination of P.W.2, nothing was elicited to shake his

testimony so far as the negligence on the part of the driver of the crime vehicle is concerned. As per the recitals of Ex.A1 (F.I.R.) and Ex.A6 (charge sheet), the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. If really, the accident occurred due to the rash and negligent driving of the driver of Tipper bearing No.AP 16 TU 2262, what prevented the driver of the crime vehicle to lodge complaint against the driver of the Tipper. This aspect also lends support to the version of petitioners that the accident was occurred due to the rash and negligent driving of the driver of the crime vehicle. As per the recitals of Ex.A3 (Post mortem examination report), the deceased died in a motor vehicle accident that occurred on 26.2.2007. The second respondent did not take any steps to examine the driver of the crime vehicle or any other eye witness to the accident to substantiate the stand taken by it. The oral testimony of P.Ws.1 and 2 coupled with Exs.A1 and A6 clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. There are no grounds much less valid grounds to interfere with the well considered finding of the Tribunal on issue No.1. Hence, this point is answered in favour of the claimants and against the second respondent.

Point Nos.2 and 3:

11. By the time of the accident, the deceased was aged about 38 years. The Tribunal has taken the multiplier as '16'. As per the recitals of Exs.A1 and A6, by the time of the accident, the deceased was working as a labourer. Even by attending coolie work, one may earn Rs.100/- per day. Taking into consideration the attending circumstances, the Tribunal rightly arrived at a conclusion that the deceased may earn Rs.3,000/- per month. From out of the said

amount 1/3rd has to be deducted towards personal expenses of the deceased. The contribution of the deceased to the family members is Rs.2,000/- per month and Rs.24,000/- per annum. The loss of dependency would come to (Rs.24,000 X 16 =) Rs.3,84,000/-. The Tribunal restricted the compensation amount to Rs.3,77,000/-. The claimants have not preferred appeal or cross-objections challenging the quantum of compensation. Hence, this court has no other alternative except restricting the compensation to Rs.3,77,000/- only. Viewed from any angle, I am unable to accede to the contention of learned counsel for the second respondent that the amount of compensation awarded by the Tribunal is on higher side.

12. The contention of the learned counsel for the second respondent is that the claimants have not produced any document to establish the jural relationship of employer and employee between the first respondent and the deceased. It is common knowledge that there would not be any written agreement for engaging workers on daily wage basis. Admittedly, the deceased used to attend cooli work on daily wage basis. Absence of written agreement between the first respondent and the deceased, by itself is not a valid ground to discard the case of the petitioners without looking into the other attending circumstances. As per the recitals of Ex.A1 (F.I.R.,) and Ex.A6 (charge sheet), by the time of the accident, the deceased was travelling in the crime vehicle as a labourer. If the deceased was not engaged as a labourer on the crime vehicle, what made him to travel in the lorry for unloading of the sand at Hyderabad. The oral testimony of P.W.2 coupled with Ex.A1 and A6 clearly reveals that by the time of the accident, the deceased was working as labourer on the crime vehicle. The second respondent has not adduced oral or documentary evidence to negative the said contention of the claimants. The Tribunal has considered oral and documentary evidence and arrived

at a conclusion that by the time of the accident, the deceased was working as a labourer on the crime vehicle. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

13. The recitals of Ex.A7 Insurance policy clearly reveals that the crime vehicle was insured with the second respondent as on the date of the accident. The terms and conditions of Ex.A7 Insurance policy cover the risk of coolies.

14. Having regard to the facts and circumstances, I am of the considered view that by the time of the accident the deceased was travelling as labourer on the lorry bearing No.AP 24V 6440. The first respondent has not violated the terms and conditions of the policy. Accordingly, point Nos.2 and 3 are answered. The appeal lacks merits.

15. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 11th August, 2015.

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