

HON'BLE SMT JUSTICE ANIS
M.A.C.M.A.No.810 of 2005

J U D G M E N T:

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 10.12.2001, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Additional District Judge, Anantapur, in O.P.No.364 of 1997, awarding compensation of Rs.1,28,000/-.

2. The respondent Nos.1 to 5/petitioners filed the above O.P under Sections 140 & 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, (for short 'the Rules') claiming compensation on account of the death of one Golla Thimmappa (hereafter referred to as 'the deceased') in a motor vehicle accident that occurred on 04.02.1997.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the petitioners are the wife and children of the deceased. On 04.02.1997, the deceased was travelling in a Tractor-Trailor bearing Nos.AP.02.C.9848 & 9849 to collect wood material for the construction of the farm shed to store agricultural implements in the land of the first respondent. At about 04:00 p.m, after loading the wood material, the tractor left Gramadatla to go to Rayadurg, and while the tractor reached near T.Veerapuram village, the driver of the tractor drove the vehicle in a rash and negligent manner and met with an accident, resulting the death of the deceased and two others, who went to coolie work for the first respondent. The deceased was hale and healthy and used to earn Rs.100/- to Rs.120/- per day at the time of accident. The driver of the tractor drove the vehicle in a rash and negligent manner, due to which the accident

occurred. The first respondent being the owner and second respondent being the insurer are jointly and severally liable to pay compensation to the petitioners.

5. During the course of trial, the sixth respondent/first respondent remained *ex parte*.

6. The brief averments made in the counter filed by the appellant/respondent No.2 are as follows:

The second respondent denied the manner of accident, age income of the deceased and stated that the deceased was not a Hamali, travelling in the Tractor-Trailor, he was an unauthorised passenger and therefore, the Insurance Company is not liable to pay any compensation. The second respondent also put the petitioners to prove that the driver of the Tractor-Trailor was not having valid license and finally stated that the compensation claimed by the petitioners is very high and excessive and prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues. To substantiate the claim, the first petitioner got examined herself as PW.1, got examined the eye witness to the accident as PW.2 and also got marked Exs.A.1 to A.4 on her behalf. On behalf of respondent No.2, RW.1 was examined and Exs.B1 & 2 got marked.

8. After considering the oral and documentary evidence, the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of the Tractor-Trailor and awarded compensation of Rs.1,28,000/- along with interest at 9% p.a to the petitioners against the respondents.

9. Being aggrieved by the award passed by the Tribunal, the appellant/second respondent preferred the present appeal.

10. The learned counsel appearing for the appellant argued that the

deceased was travelling in the Tractor-Trailor as passenger, but not as Hamali, and he was a midway passenger. The learned counsel also relied upon Section 162 Cr.P.C statement of the deceased under Ex.B2, wherein the deceased clearly stated that he was travelling as a passenger and the owner of the vehicle violated the terms of the policy by allowing him as a passenger in the goods vehicle and that the petitioners are not entitled to claim any compensation, therefore prayed the Court to allow the appeal.

11. On the other hand, the learned counsel appearing for respondent Nos.1 to 5/petitioners argued that the deceased was a Hamali working with the first respondent and he was not a midway passenger; that Ex.B2 cannot be considered in view of the judgment of this Court in ***K.Ramana v. K.Thirumala Reddy and another***^[1], wherein it is held as follows:

“Statements under Sec.162 Cr.P.C – Taking a decision by Claims Tribunal based on statements recorded by police under Section 162 Cr.P.C during investigation of the criminal case relating to motor vehicle accident, marking them as substantive evidence without putting them to witnesses during their cross-examination in Court for contradicting their evidence is unsustainable in law.”

that the compensation awarded by the Tribunal is just and reasonable and prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the award passed by the Tribunal is just and reasonable?
2. Whether the appellant has made out any case for reduction of compensation awarded by the Tribunal to the petitioners as prayed for?

13. **POINTS:** To prove the accident, the wife of the deceased was examined as PW.1 and got examined PW.2, who worked as Hamali

along with the deceased under respondent No.1. PW.1 is not the eye witness to the accident. According to PW.2, on the date of accident, he along with deceased and others were travelling in the Tractor-Trailor as per the instructions of the first respondent to build a cattle shed and the driver of the tractor driven it in a rash and negligent manner, due to which it turned turtle and as a result, the deceased fell down and died. He gave a reason for the accident as the Tractor-Trailor was unlocked.

14. To prove the oral evidence, the petitioners filed Exs.A1 & A4 i.e., certified copy of the First Information Report and certified copy of the Charge Sheet. The Investigating Officer after conducting the investigation filed the charge sheet against the driver of the tractor. Respondent No.1 examined RW.1, who was working as an Administrative Officer for the second respondent Insurance Company. According to RW.1, PW.2 is the worker travelling in the tractor and he is the eye witness to the accident. He also admitted that the investigation of police revealed that accident took place due to rash and negligence of the driver of the tractor. Therefore, basing on the evidence of PWs.1 & 2 and RW.2 coupled with Exs.A1 & A4, the Tribunal rightly held that the accident was occurred due to rash and negligent driving of the driver of the tractor-trailor bearing No.AP.02.C.9848 & 9849.

15. Coming to the quantum of compensation awarded by the Tribunal is concerned, the Tribunal granted an amount of Rs.1,28,000/- along with interest at 9% p.a. The petitioners had not disputed about the quantum of compensation and the Insurance Company also has not seriously contested on this aspect.

16. The contention of the learned counsel for appellant-Insurance Company is that the deceased was a midway passenger travelled in a goods vehicle and there is no insurance coverage at the time of accident, and the deceased was not a Hamali working with first respondent and therefore, the Insurance Company is not liable to pay

any compensation to the petitioners. The learned counsel also contended that the deceased gave Section 162 Cr.P.C statement to the police under Ex.B2, in which he categorically stated that he boarded the vehicle on the midway. To prove the contentions raised in the counter, the appellant Insurance Company got examined RW.1 and got marked Exs.B1 & B2. A perusal of Ex.B1 shows that it is not an Act policy, but it is a B-marked policy. In the cross-examination, RW.1 admitted that owner of the Tractor-Trailor paid premium covering the risk of the driver and five workmen. As per the evidence of PW.2, the deceased is also one of the Hamali working with the first respondent. PW.2 stated that the deceased used to go as Hamali in the tractor of the first respondent. On the date of accident, he was also travelling in the tractor along with Guru Swamy and deceased and he also received injuries in the accident. Therefore, as per the evidence of PW.2 & RW.1, it is evident that the deceased was travelling as Hamali and respondent No.1 paid the premium covering the risk of the driver and five workmen. Therefore, the Tribunal after considering all these aspects rightly held that the second respondent is liable to pay compensation.

17. The other contention raised by the learned counsel for the appellant is that the deceased gave Ex.B2 to the police stating that he was a midway passenger. In this regard, the learned counsel for the respondent Nos.1 to 5 relied upon the case law i.e., ***K.Ramana's case*** (first cited supra), wherein this Court held as follows:

"PW.3 deposed before the Tribunal that he and others were working as hamalies in the tractor and they witnessed the accident while they were returning in the said tractor after unloading the sand. The second respondent/insurance company examined only its Administrative Officer as RW1 and he has no personal knowledge about the avocation of the claimant or the facts leading to the occurrence of the accident. Therefore, his evidence cannot be taken in to account for considering the question as to whether the appellant/claimant was working as hamali in the offending vehicle at the relevant time. The learned Tribunal however, relying on Ex.B.4 and B.5, 162 Cr.P.C. statements of some

witnesses recorded by the police during the course of investigation in the criminal case expressed the opinion that there are discrepancies in the evidence of PWs.1 and 3 before the learned Tribunal when compared to the said 162 Cr.P.C statements recorded by the police in the criminal case. **According to me, the approach adopted by the learned Tribunal is totally misconceived and erroneous. Section 162 Cr.P.C. statements can only be used for the purpose of contradicting the evidence of witnesses before the Court, but they do not have any evidentiary value of substantive nature.** They were not confronted to PWs.1 and 3 during the course of cross examination. The learned Tribunal therefore ought not to have marked them as exhibits at all and making a decision basing on 162 Cr.P.C statements is misconceived and the finding of the learned Tribunal therefore, is unsustainable in law.”

A perusal of the above said case law shows that the facts and circumstances of the said case are similar and relevant to the present facts of the case. By applying the ratio laid down by this Court in the above case law, the Tribunal ought not to have marked Ex.B2 in this case and as such the contention of the learned counsel for the appellant that the deceased was a midway passenger cannot be accepted and therefore, the Tribunal rightly held that the second respondent is liable to pay compensation to the petitioners.

18. Therefore, in view of the above discussion, I am of the view that the Tribunal rightly awarded compensation to the petitioners against both the respondents and the finding of the Tribunal needs no interference.

19. Accordingly, the appeal is dismissed. No order as to costs.

20. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 15.07.2015

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^[1] 2012 (5) ALT 341