

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1216 OF 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellants/petitioners challenging the judgment and award, dated 04.01.2003 passed in M.V.O.P.No.698 of 2000 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Cuddapah (for short, 'the Tribunal').

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

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 17.05.2000, Chittiboyana Gangulaiah and others were engaged as coolies in the Tractor and Tractor bearing Nos.AP-03-W-324 and AP-03-T-9412 respectively for transportation of gravel. After loading of the tractor with gravel, Gangulaiah and others were proceeding from Mundlavarikota on the tractor. When the tractor and trailer reached near Reddivaripalli Satram, the trally hook de-linked with the tractor due to which, the trailer turned turtle. The accident occurred due to the rash and negligent driving of the driver of the tractor, against whom the Station House Officer, Chinnamandyam Police Station registered a case in Crime No.26 of 2000 for the offences under Sections 337 and 304-A I.P.C. Due to accident, Gangulaiah (hereinafter referred to as 'the deceased') sustained grievous injuries and died. By the time of accident, the deceased was aged about 40 years and used to earn Rs.5,000/- per month as Mason and Coolie. Petitioner No.1 is the wife and petitioner Nos.2 and 3 are children of the deceased, and they are dependants on the income of the deceased. The tractor and trailer, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioners.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed written statement denying all the averments made in the petition *inter alia* contending that respondent No.1 had violated the terms and conditions of the policy by using the tractor and

trailer for commercial purpose. Therefore, there is no obligation on the part of this respondent to indemnify the liability of respondent No.1 The driver of the tractor and trailer was not having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

- (1) Whether the death of the deceased by name C.Gangulaiah occurred due to rash and negligent driving of Tractor/Trailer bearing No. A.P.03-W-324/A.P.03-T-9412 belonging to 1st respondent?
- (2) Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
- (3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the contesting respondent, RW.1 was examined and Exs.B.1 and B.2 were marked.

7. On appraisal of 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 tractor, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.1,00,000/- directing respondent No.1 to pay the compensation amount with interest at the rate of 9% per annum from the date of petition till the date of deposit. The petition against respondent No.2 was dismissed.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

9. Heard Sri L.J.Veera Reddy, the learned counsel for the petitioners and Smt. S.A.V.Ratnam, the learned Standing Counsel for respondent No.2 – United India Insurance Company Limited.

10. The contention of the learned counsel for the petitioners is two fold: (1) The amount of compensation awarded by the Tribunal is too meagre, and (2) The finding of the Tribunal that respondent No.1 had violated the terms and conditions of the

policy is not sustainable.

11. Per contra, the learned Standing Counsel for respondent No.2 submitted that the Tribunal has awarded just and reasonable compensation to the petitioners. She further submitted that the finding of the Tribunal that respondent No.1 had violated the terms and conditions of the policy is supported by oral and documentary evidence.

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

1. Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?
2. Whether respondent No.1 had violated the terms and conditions of the policy so as to absolve the liability of respondent No.2 or not?

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Point No.1:

13. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer which resulted in the death of the deceased. The finding recorded by the Tribunal on issue No.1 became final in view of non-filing of the appeal or cross-objections by the respondents challenging the said finding. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the tractor which resulted in the death of the deceased.

14. A perusal of the record reveals that the Tribunal passed the order in a casual manner without following the procedure. In Ex.A.3 – certified copy of inquest report, the age of the deceased was shown as '45' years. As per the decision reported in **Sarla Verma v. Delhi Transport Corporation**, the appropriate multiplier to be taken for the age group of 41 to 45 years is '14'. Except the self-served testimony of PW.1, there is no other convincing evidence to prove that the deceased used to earn Rs.5,000/- per month. Even by attending coolie work, the deceased may earn not less than Rs.1,500/- per month. Out of which, 1/3rd shall be deducted towards personal expenses of the deceased. The deceased may contribute Rs.1,000/- per

month. Per annum, it comes to Rs.12,000/-. The loss of dependency comes to Rs.1,68,000/- (12,000 X 14). Petitioner No.1, being the wife of the deceased, is entitled for loss of consortium. Hence, I am inclined to award an amount of Rs.20,000/- towards loss of consortium. I am also inclined to award an amount of Rs.2,000 towards funeral expenses, Rs.2,000/- towards transportation charges of the dead body and Rs.8,000/- towards loss of estate and love and affection. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows:

01.	Loss of dependency	Rs.1,68,000/-
02.	Loss of consortium	Rs. 20,000/-
03.	Funeral expenses	Rs. 2,000/-
04.	Transportation charges	Rs. 2,000/-
05.	Loss of estate and love and affection	Rs. 8,000/-
	Total:	Rs.2,00,000/-

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The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice. Having regard to the facts and circumstances of the case, I am of the considered view that the amount of compensation awarded by the Tribunal is on lower side. The finding of the Tribunal that the petitioners are entitled only Rs.1,00,000/- is not sustainable either on facts or on law.

POINT No.2:

15. As per the testimony of RW.1, the tractor and trailer bearing Nos. AP-03-W-324 and AP-03-T-9412 was insured with respondent No.2 – Insurance Company under Ex.B.1 – policy. His testimony further reveals that the insurance policy was in force as on the date of accident. The oral testimony of RW.1 coupled with Ex.B.2 reveals

that the driver of the tractor and trailer was having valid and effective driving licence as on the date of accident. Whether respondent No.1 had violated the terms and conditions of policy by transporting gravel in the tractor and trailer or not?

16. As per the testimony of RW.1, Ex.B.1 was issued for agricultural purpose. On the date of accident, the deceased and others were engaged by respondent No.1 for loading and unloading of the gravel. Absolutely, there is no material on record to establish that respondent No.1 hired the tractor and trailer to third parties for transportation of the gravel. In the policy (Ex.B.1) also, it is mentioned that the vehicle in question is a commercial vehicle. Therefore, the contention of the learned Standing Counsel for respondent No.2 that Ex.B.1 – Policy was issued for agriculture purpose only is not tenable. Had the Tribunal has taken little care to verify Ex.B.1 – Policy, the finding of it would be otherwise. It seems that the Tribunal arrived at a conclusion that respondent No.1 had violated the terms and conditions of policy without verifying the contents of Ex.B.1 – Policy. The finding of the Tribunal that respondent No.1 had violated the terms and conditions of the policy is not based on the oral and documentary evidence. Hence, there are grounds much less valid grounds to set aside the finding of the Tribunal.

17. Respondent No.1, being the owner of the tractor and trailer, is vicariously liable for the wrongful acts done by his driver during the course of employment. Respondent No.2 has to indemnify the liability of respondent No.1 as Ex.B.1 – Policy was in force as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

18. In the result, the Appeal is allowed by enhancing the quantum of compensation from Rs.1,00,000/- to Rs.2,00,000/- directing respondent Nos.1 and 2 jointly and severally to pay the compensation to the petitioners with interest at the rate of 9% per annum on Rs.1,00,000/- and 7.5% per annum on the enhanced amount of Rs.1,00,000/- from the date of petition till the date of deposit. Petitioner Nos.1 to 3 are equally entitled to the compensation amount. There shall be no order as to costs.

19. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 15.04.2015

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