

**HON'BLE SRI JUSTICE S.V.BHATT**

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**M.A.C.M.A.No.1231 OF 2005**

**JUDGMENT:**

Third respondent/United Insurance Company Limited in M.V.O.P.No.28 of 2002 in the Court of III Additional District and Sessions Judge, Visakhapatnam (for short 'the Tribunal') is the appellant herein.

The appeal is directed against the award dated 25.10.2004 in M.V.O.P.No.28 of 2002.

The appellant, in the instant appeal, has confined the challenge to the findings recorded by the Tribunal on contributory negligence of the deceased and the failure of Tribunal to apportion the compensation between the parties. Therefore, having regard to the limited challenge, the pleadings relevant for the said purpose are adverted to.

On 19.01.2001 at 05.30 A.M., the deceased Dasari Venkata Ramana, aged 34 years, was going on his scooter bearing No.AP 31 D 1259 to attend first shift duty in Visakhapatnam Steel Plant.

On the way. on railway flyover, he hit the stationary vehicle bearing No.AP 31 V 2433 parked on railway flyover and died of grievous head injury in the said accident. The claimants are wife, children and mother of the deceased. The claimants claimed a sum of Rs.3,00,000/- as compensation under various heads from the appellant herein and respondent No.5.

The appellant contested the claim *inter alia* on the ground that the appellant is not under obligation to pay compensation unless it is proved that the stationary van bearing registration

No.AP 31 V 2433 was driven by a person having valid driving licence and that there is negligence on the part of deceased. Further, it is alleged that the first information report, inquest report and the motor vehicle inspector's report show that the deceased himself dashed the van with his scooter and, therefore, the appellant is

not liable to pay compensation at all. Alternatively, the contributory element in the accident resulting in the death of Dasari Venkata Ramana shall be determined.

The principal objection is that the deceased himself contributed to the accident as the deceased drove the scooter without observing the stationary van. Therefore, the accident is on account of rash and negligent driving of the deceased. On the basis of the allegations, the Tribunal framed the following issues for decision:

- i.                   Whether Dasari Venkata Ramana died on account of the rash and negligent driving of the vehicle bearing Regn.No.AP 31 V 2433 by its driver?
  
- ii.                  Whether the petitioners are entitled to compensation and if so that what amount and from which of the respondents?
  
- iii.                 To what relief?

On behalf of claimants, P.Ws.1 to 3 were examined and Exs.A-1 to A-9 were marked. On behalf of the appellant, RWs.1 and 2 were examined and Exs.B1 to B4 were marked.

The Tribunal, upon consideration of the material available on record and more particularly having regard to the fact that the appellant or for that matter the contesting respondent did not examine the driver of stationary vehicle, held as follows:

“However, the manner in which the accident took place and the manner in which the van was placed on the high way near Railway Fly over Bridge show that the driver of the van was negligent in keeping the van on the high way.

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The accident herein took place at about 05.30 A.M., i.e., early hours. It is not the case of the first respondent as well as the

3<sup>rd</sup> respondent that the driver of van had taken precautions by putting signals. Therefore, in the above circumstances and especially in the absence of the evidence of the driver of the van, though Ex.A-1 is registered against the deceased, I find that the accident arose due to the negligence of the driver of the van. Thus, I find for the above reasons that Dasari Venkata Ramana died on account of the rash and negligent driving of the vehicle bearing registration No.AP 31 V 2433 by its driver. The issued is accordingly answered.”

The Tribunal as against the claim of Rs.3,00,000/- awarded Rs.1,82,248/- to the claimants/respondents. Hence, the appeal.

Sri Naresh Byrapaneni, learned counsel for the appellant, contends that the deceased Venkata Ramana died due to rash driving of scooter bearing No. AP 31 D 1259, thereby hitting the stationary van bearing No.AP 31 V 2433. Therefore, even assuming that for the stationary vehicle appellant/insurance company has covered the risk, still on account of the fact that the death is due to the scooter hitting a stationary vehicle, the Tribunal ought to have considered the principle of contributory negligence by the deceased in hitting the stationary vehicle and accordingly apportioned the compensation awarded, through award dated 25.10.2004. The learned counsel draws the attention of the Court to the oral evidence of P.Ws.1 to 3 and Rule 476 of the A.P. Motor Vehicle Rules, 1989. The learned counsel finally contends that the award of compensation of Rs.1,82,248/- against the appellant is unsustainable and determining the contributory negligence of the deceased hitting a stationary vehicle, the compensation is to be properly determined.

Mr.Ramgopal, learned counsel appearing for the claimants/ respondents, contends that the accident happened at 5.30 AM., on 19.01.2001 on a railway fly over at Aganampudi. The accident, according to the submission of learned counsel for the claimants, occurred in the month of January. Parking the vehicle on a flyover is the unexplained negligent act and it is for the appellant, or for that matter the owner of the stationary vehicle to show that parked vehicle followed sufficient precautions and that blinkers were on and in spite of all care being taken by the driver of

stationary vehicle, the deceased hit the stationary vehicle.

The non-examination of the driver of stationary vehicle is very fatal to the case. It is probable that the visibility was very poor

and the contributory negligence attributed to the deceased is unsustainable and no material is placed on record to accept the same. He prays for dismissal of appeal.

Now the point for consideration is - whether the contributory negligence pleaded by the appellant is tenable and whether the finding of the Tribunal on issue No.1 is sustainable or not?

To recapitulate the events, on 19.01.2001 at 5.30 AM on railway fly over at Aganampudi, the deceased while going on scooter hit a stationed vehicle and died of grievous injuries.

The parking of vehicle on a railway flyover itself, in the considered view of this Court, is an act of negligence on the part of the stationary vehicle bearing No.AP 31 V 2433. Further, the plea of contributory negligence is taken by the appellant herein. Either the appellant must adduce evidence in support of contributory negligence or make out the existence of contributory negligence from the material available on record. For this purpose, learned counsel for the appellant has drawn the attention of this Court to the oral evidence of P.W.1 and Exs.A-1 to A4. With the assistance of the learned counsel for the appellant, I have perused the oral and documentary evidence. This material, in my considered view, does not in any way show that there existed contributory negligence of deceased in the accident at 5.30 AM., on 19.01.2001. The findings recorded by the Tribunal are based on material available on record and probabilities of the case and no exception can be taken to the well considered findings recorded by the Tribunal.

For the above reasons, having been in full agreement with the findings recorded by the Tribunal, I see no reason to apportion the compensation between the two vehicles involved in the accident on 19.01.2001.

The appeal is, accordingly, dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

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***S.V.BHATT, J***

03<sup>rd</sup> November, 2015

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