

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1874 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/respondent No.2 challenging the judgment and award, dated 17.10.2007 passed in M.V.O.P.No.379 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Tirupati (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 07.02.2004, Sri G.Venkatasubbaiah and others were engaged in the lorry bearing No.HR.46/C-7177 for loading of papaya fruits and when the lorry reached near Mukkavaripalle Village of Rajampet – Kodur main road, the driver of the lorry had driven the same in a rash and negligent manner, due to which, the lorry turned turtle. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, Obulavaripalle Police Station registered a case in Crime No.7 of 2004 for the offences punishable under Sections 337, 338 and 304-A I.P.C. Venkatasubbaiah (hereinafter referred to as 'the deceased') died in SVRR Hospital, Tirupati while undergoing treatment. By the time of accident, the deceased was aged about 28 years and used to earn Rs.200/- per day by attending coolie work. The petitioners are the dependants on the income of the deceased. The lorry, 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.8,00,000/- to the petitioners.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed counter 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 permitting the deceased and others to travel in the lorry. Therefore, there is no contractual obligation on the part of this respondent to indemnify the liability of respondent No.1. 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 deceased G.Venkatasubbaiah died in the Motor Vehicle accident that took place due to rash and negligent driving of the Lorry bearing No.HR 46/C – 7177 by its driver?
2. What was the age and income of the deceased on the date of his death?
3. Whether the petitioners are entitled for compensation? If so, to what amount? By whom?
4. 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.5 were marked. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

7. Basing on 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 lorry which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.3,60,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

8. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred the present appeal.

9. Heard Smt. S.A.V.Ratnam, the learned Standing Counsel for respondent No.2 – Insurance Company and Sri V.Eswaraiah Chowdary, the learned counsel for the petitioners.

10. The contention of the learned Standing Counsel for respondent No.2 is two fold: (1) The amount of compensation awarded by the Tribunal is highly excessive and exorbitant, and (2) The Tribunal wrongly fastened the liability on respondent No.2 even though the policy does not cover the risk of the coolies engaged in the lorry.

11. 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?

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Point No1:

12. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry. The oral testimony of PWs.1 and 2 coupled with Exs.A.1 and A.2 clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the lorry. A perusal of Ex.A.3 – Post-mortem Certificate and Ex.A.4 – inquest report reveals that the deceased died due to injuries sustained in the accident. The Tribunal has assigned cogent and valid reasons to its findings on issue No.1. There are no grounds much less valid grounds to upset or modify the finding recorded by the Tribunal on issue No.1. 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 lorry which resulted in the death of the deceased.

13. By the time of accident, the deceased was aged about 28 years. The Tribunal has taken the multiplier '18'. Except the self-served testimony of PW.1, there is no other convincing evidence to prove the income of the deceased. Taking into consideration the material available on record, the Tribunal arrived at a conclusion that the deceased may earn Rs.2,400/- per month. In the villages even by attending coolie work one may earn Rs.2,400/- per month. The Tribunal rightly considered the income of the deceased as Rs.2,400/- per month and deducted 1/3rd towards his personal expenses. The deceased may contribute Rs.1,600/- per month to his family members (2,400-800). The loss of dependency comes to Rs.3,45,600/- (1600 X 12 X

18). The Tribunal has also awarded an amount of Rs.15,000/- towards loss of consortium. In total, the Tribunal has awarded an amount of Rs.3,60,000/-. The claimants have not filed appeal or cross objections challenging the quantum of compensation awarded by the Tribunal. Accordingly, the quantum of compensation awarded by the Tribunal became final so far as the petitioners are concerned in view of non-filing of the cross objections by them.

14. Having regard to the facts and circumstances of the case,

I am of the considered view that the Tribunal has awarded just and reasonable compensation. Therefore, I am unable to accede to the contention of learned Standing Counsel for respondent No.2 that the amount of compensation awarded by the Tribunal is on higher side.

POINT No.2:

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15. It is not the case of respondent No.2 that the lorry was not insured with it. Respondent No.2 has taken a specific plea in the counter that the policy issued by it does not cover the risk of coolies engaged in the lorry. Mere taking of the plea in the counter by itself would not amount to proving of the stand taken by respondent No.2. The burden of proof lies on respondent No.2 to establish that the policy issued by it does not cover the risk of the coolies. It is not the case of respondent No.2 that the policy was not in its custody. If really the policy does not cover the risk of the coolies engaged in the lorry, what prevented the Insurance Company to mark the insurance policy before the Tribunal? If a person, who is in custody of a particular document, intentionally and wilfully did not produce the same before the Court or the Tribunal, then the Tribunal or the Court can draw an adverse inference on this aspect. For the reasons best known, respondent No.2 did not choose to adduce either oral or documentary evidence to substantiate the stand taken by it. The Insurance Company failed to establish that the policy does not cover the risk of the coolies engaged in the lorry. The Tribunal has rightly considered various aspects and arrived at a conclusion that respondent No.1 had not violated the terms and conditions of the policy. I am fully agreeing with the finding recorded by the Tribunal.

Respondent No.2 has to indemnify the liability of respondent No.1. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. In the light of the foregoing discussion, I am unable to accede to the contention of the learned Standing Counsel for respondent No.2 that respondent No.1 had violated the terms and conditions of the policy.

16. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 24.03.2015

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