

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 686 of 2006

Judgment:

The instant appeal is preferred by the third respondent – Oriental Insurance Company Limited, in MVOP No. 548 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Narsapur (for short 'the Tribunal'), aggrieved by the order, dated 31st October 2005, whereby and whereunder a sum of Rs.1,45,200/- was granted as compensation mulcting liability on the respondents 1 to 3 to pay jointly and severally.

2. For the sake of inconvenience, the parties hereinafter referred to as arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that one Mainam Peddi Raju, whose wife is the first petitioner and children are second and third petitioners and mother is the fourth petitioner, on 21.04.2003 at about 11.30 AM, along with other coolies followed with the Tractor and Trailer, belonging to the second respondent, bearing registration No.AP-37-U-1056 and AP-37-T-6816. The said Peddi Raju was sitting by the side of the driver of the Tractor, the first respondent, who drove the tractor-trailer in a rash and negligent manner, resulting in the said Peddi Raju slipping from the tractor and felling on the raw-bar and then sliding down and coming under the wheels of trailer resulting in his instant death. The petitioners, projecting that the said Peddi Raju was 35 years old and working as a coolie for loading and unloading purpose earning Rs.2,500/- per month and contributing the entire earnings for the family, sought a sum of Rs.3,00,000/- as compensation by laying the claim under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against the respondents 1 to 3 who are the driver, owner and insurer respectively.

4. The first respondent disowned the stand of the petitioners that he drove the tractor

at the relevant time. According to him, he never worked as a driver and even he denied the taking place of the accident as projected by the petitioners contending that he is not liable to pay compensation at all and the Insurance Company, in case there is insurance coverage, is liable to pay compensation.

5. The second respondent also filed his counter disputing the stand of the petitioners that he engaged the deceased as a coolie for loading and unloading purpose on the date of alleged accident, thus, denied every allegation mentioned in the petition. Finally, he got mentioned that in case any accident did really take place, since the tractor had third party insurance coverage with the third respondent – Insurance Company, the third respondent alone is liable to pay compensation, but not by him and, therefore, sought to exonerate him.

6. The third respondent – Insurance Company filed counter opposing the claim. While denying the material allegations mentioned in the petition, contended that the deceased was travelling on a raw-bar unauthorisedly, therefore, he was an unauthorized passenger at the relevant time and it amounts to violation of terms and conditions of the policy and, therefore, no liability can be fastened on it, besides contending that the claim of Rs.3,00,000/- laid by the petitioners is excessive and sought to dismiss the claim petition.

7. The Tribunal, based on the said pleadings, framed the following three issues about the responsibility for the accident.

“1. Whether the accident was occurred due to rash and negligent driving of the Tractor-cum-Trailer bearing No.AP-37-U-1056 and AP-37-T-6816 driven by its driver-first respondent which dashed against the deceased?

2. Whether the petitioners are entitled to claim compensation and if so, how much amount each petitioner is entitled and whether they are entitled to claim compensation against all the respondents?

3. To what relief?”

8. During enquiry, the first petitioner, besides examining herself as PW.1, also examined PW.2, an eye witness to the occurrence, and marked Exs.A1 to A4. On

behalf of the respondents, RWs.1 and 2 were examined and Exs.B1 to B4 were marked in order to substantiate their case that the deceased was an unauthorized passenger as the permit relating to the tractor and trailer was goods carriage permit issued by the Regional Transport Authority, Bhimavaram.

9. The Tribunal, on over all assessment of the evidence let in by the petitioners, held issue No.1 in favour of the petitioners.

10. On issue No.2, taking the age of the deceased as 35 years and the monthly income at Rs.900/-, calculated on the basis that the deceased must have been earning daily wage at Rs.30/-, deducted $\frac{1}{3}$ rd there from and remainder of Rs.600/- per month was taken as contribution to the family and Rs.7200/- per annum, applied the multiplier '16', arrived the loss of dependency at Rs.1,15,200/-. Besides the same, the Tribunal has also fixed a sum of Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and, thus, a total sum of Rs.1,45,200/- was awarded towards compensation.

11. The Tribunal then proceeded with the liability to pay compensation and referring to the respective contentions raised by the learned counsel, placing reliance on the decision of the Hon'ble Apex Court in **Kannekanti Varamma v. Puli Ramakotaiah**, for the proposition that when there is no contravention on the covenant of the policy, even though there is contravention of the conditions of the statute, the Insurance Company is liable to pay compensation, and also referred to other decisions of this Court and accepting the stand of the petitioners that the deceased was a coolie engaged for loading and unloading purpose, held that the third respondent - Insurance Company is liable to pay compensation and, thereby, passed the order and decree challenged herein by the third respondent – Insurance Company.

12. In the grounds of appeal, it is stated that the Tribunal failed to see that the deceased himself was responsible for the accident and the driver cannot be blamed as he himself invited death by sitting on the connected rod of the vehicle. It is also specifically stated that the Tribunal, somehow, failed to see that the deceased was

not a labourer and was not working under the insured/owner of the vehicle and, therefore, no liability can be fastened on the appellant. It is also contended that the deceased was an unauthorized passenger on the vehicle involved in the accident and the travel in the said vehicle was prohibited under Ex.B4 and, therefore, sought to dismiss the claim petition.

13. Heard Sri Kota Subba Rao, learned counsel for the appellant – Insurance Company, and Sri K. Chidambaram, learned counsel for the sixth respondent – owner of the Tractor. Despite service of notice on the respondents 1 and 4, since respondents 2 and 3 are minors represented by the first respondent, none appears for them. So far as the fifth respondent is concerned, it was endorsed in the grounds of appeal that he is not a necessary party.

14. Perused the order and the evidence let in by the parties, both, oral and documentary. The controversy in the instant appeal is very limited to the extent, whether the deceased can be construed as an unauthorized passenger or whether he was working as a coolie for loading and unloading purpose under the owner of the tractor-cum-trailer involved in the instant accident.

15. Learned counsel for the appellant has drawn the attention of this Court to the particulars mentioned against column Nos.4 and 5 of the prescribed proforma of the claim petition. Column No.4 deals with the occupation of the deceased against which the petitioners have mentioned as “Fish boat manufacturer”. In column No.5, which is intended to show the name and address of the employer of the deceased, it is mentioned thus; “does not arise”. Basing on the said particulars noted by the petitioners, it is the submission of the learned counsel for the appellant that they belie the very stand taken by the petitioners that the deceased was working as a labourer on the tractor-trailer under the second respondent – owner.

16. It is no doubt true that in the body of the claim petition against column No.26, an amendment was made, as per the orders in IA No.21 of 2005, thus:

“On 21.04.2003 at about 11.30 AM the deceased Peddi Raju, S/o

Krishna Murthy who is working as a loading and unloading coolie along with other coolies followed the tractor-cum-trailer of 2nd respondent. The 1st respondent is the driver of the vehicle. The regd. Number of Tractor and Trailer are respectively AP 27 U 1056 and AP 27 T 6816. The deceased Peddiraju was sitting by the side of the 1st respondent driver and the 1st respondent driver was driving the vehicle with a high speed and negligently. The load in the Tractor is hayrick and the driver could not control the vehicle because of load in the trailer. Due to that speed, the deceased Peddiraju slipped from the tractor and fell down on the raw-bar of tractor and the wheels of the trailer ran over by him and he died on the spot.”

But, strangely, no amendment was made to the particulars mentioned against columns 4 and 5 mentioned in the above. In the presence of the said particulars relating to the profession of the deceased mentioned against columns 4 and 5, which are of vital significance in allowing the claim petition and, more particularly, mentioning the words “working under anyone does not arise” as per the petitioners version, their stand that the deceased was a labourer and working under the second respondent – owner of the tractor and trailer cannot be believed. In fact, it was suggested by the learned counsel for the Insurance Company before the Tribunal to PW.1 in her cross-examination that her husband was working as fish boat manufacturer and was getting Rs.3,000/- per month, but it was denied by her and even the suggestion that her husband was travelling in the tractor as a gratuitous passenger was also denied. The said suggestions were based on the very particulars mentioned by the petitioners in their claim petition and the denial of the said suggestions would give rise to inference that the petitioners have put forth an incorrect stand that the deceased was working as a coolie and employed on the tractor and trailer only with a view to project him as a coolie and to bring him within the coverage of insurance so as to sustain their claim.

17. On the other hand, the evidence of RW.1, examined on behalf of the third respondent, proves that the deceased was travelling as an unauthorized passenger by violating the terms and conditions of the policy. The third respondent – Insurance Company issued the coverage of policy for assuring third party liability of the vehicle which is marked as Ex.B1 and it reflects as to what RW.1 had asserted in his chief

examination. It is no doubt true, he was cross-examined by the learned counsel for the petitioners before the Tribunal, but nothing concrete has been elicited to disprove the stand that the deceased was working as a fish boat manufacturer. Thus, when kept in view, the particulars mentioned against columns 4 and 5 and the evidence of RW.1, no other inference can be drawn except the inescapable inference that the deceased was not working as a coolie, but he was working as a fish boat manufacturer and incidentally travelling in the tractor and trailer as a gratuitous passenger, in view of the prohibition contained in Ex.B1 as to the use of the vehicle insured with the third respondent.

18. Therefore, the appeal is allowed setting aside the order and decree passed by the Tribunal to the extent of fastening liability on the Insurance Company, but maintaining the same in all other respects. There shall be no order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 02.04.2015

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