

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A. C.M.A. No.959 OF 2006**

**JUDGMENT:**

Aggrieved of the order and decree, dated 27-10-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum -

VI Additional District Judge (Fast Track Court), Anantapur at Gooty, in O.P. No.21 of 2002, granting compensation of Rs.2,50,000/-, which was also the amount claimed by the petitioners under Sections 140 and 166 of the Motor Vehicles Act, 1988, with interest at 9% per annum, the instant appeal is preferred by the National Insurance Company Limited - 2<sup>nd</sup> respondent in the above O.P.

2. The appellant herein (Insurance Company) is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 6 are petitioners and respondent No.7, who is owner of the lorry involved in the accident, is respondent No.1.

3. Respondent Nos.1 to 6 are wife, children and mother, respectively, of Angadi Hussain Saheb, who died in the accident in the instant case.

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

5. The facts, in brief, are that on 10-12-2001, at

about

7-15 a.m., while Angadi Hussain Saheb was standing on the road near Veerapalli village on Gooty - Tadipatri main road, a lorry bearing No.GJ-6/W-5822 driven at high speed in a rash and negligent manner, hit him causing grievous injuries, resulting in his instantaneous death. The petitioners projecting that they are legal heirs of Hussain Saheb (hereinafter referred to as 'deceased') and that he was earning Rs.3,500/- per month on agricultural lands, sought Rs.2,50,000/- towards compensation from respondent Nos.1 and 2.

6. Respondent Nos.1 and 2, owner and insurer of the lorry involved in the accident, filed separate counters denying the allegations made in the claim petition. The 2<sup>nd</sup> respondent has taken a specific plea as to driver of the lorry not possessing valid subsisting driving licence as on the date of accident, in paragraph No.7 of its counter which is as under:

“7. The driver of the vehicle had no driving license on the date of the accident. so this respondent No2 is not liable for payment of compensation. There is violation of the policy conditions.”

7. The Tribunal framed the following three (3) issues:

“1) Whether the accident occurred on 10-12-2001 due to rash  
and negligent driving of the driver of the lorry

bearing

No.GJ-6/W-5822 and caused the injuries to the petitioner?

- 2) Whether the petitioners are entitled for compensation and if so to what amount?
- 3) To what relief?"

8. During enquiry, the 1<sup>st</sup> petitioner, wife of the deceased, examined herself as PW.1 and marked Exs.A-1 to A-5. On behalf of the respondents, no oral or documentary evidence was adduced.

9. The Tribunal held issue No.1 in affirmative. On issue No.2, the Tribunal determined the compensation at Rs.2,50,000/- and granted the same with interest at 9% per annum, which details are unnecessary to narrate herein in view of the fact that no specific issue is framed touching the aspect of the lorry driver not possessing valid subsisting driving licence at the time of accident despite a specific plea being taken by the 2<sup>nd</sup> respondent - insurance company.

10. Heard Sri Katta Laxmi Prasad, learned counsel for the 2<sup>nd</sup> respondent (appellant - insurance company), and Sri K. Suresh Reddy, learned counsel for the petitioners (respondent Nos.1 to 6.)

11. Since no memo is filed as to proof of service

against respondent No.7, owner of the lorry (Trumsit Mixer, Ashok Leyland) bearing No.GJ-6/W-5822, the appeal against it is dismissed for non-prosecution.

12. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners.

13. No doubt, the insurance company has not adduced any evidence. However, in the absence of specific issue, touching the aspect whether the lorry driver did possess valid driving licence to drive the lorry involved in the accident or not, at the relevant time, on which aspect of the case, the insurance company was expected to lead evidence, and the violation being material in deciding the controversy in the instant appeal, certainly, the matter requires to be remitted, though, it is the duty of the Tribunal to frame relevant and necessary issues, somehow, failed to frame the issue touching violation of terms and conditions of policy which relate to whether driver of the lorry was possessing valid and subsisting driving licence at the relevant time, to drive the lorry involved in the accident.

14. Therefore, the order under challenge is set aside and the matter is remitted to the Tribunal with a direction to afford an opportunity to frame relevant issue on the plea taken by the insurance company, referred to

hereinabove, and to afford a chance to both sides to lead further evidence and adjudicate upon the controversy between the parties in granting the relief. Since it is an old case relating to the year 2002, the Tribunal is directed to dispose of the matter within six (6) months from the date of receipt of a copy of this order.

15. Accordingly, the Civil Miscellaneous Appeal is disposed of with the directions, as indicated above. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

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**A. SHANKAR NARAYANA, J**

**March 17, 2015.**

**NOTE:**

**Dispatch the order forthwith by marking a copy to the Tribunal.**

**(B/O)**  
**PV**