HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.486 OF 2009

JUDGMENT:

This appeal is filed by the insurance company challenging the judgment and award dated 20.8.2002 passed in O.P. No.226 of 2000 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal, in brief, are as follows: On 05.1.1999 Katraju Ramaswamy was engaged by the first respondent for cutting stones. At about 5.00 P.M., Ramaswamy boarded dumper bearing No.AP 31 5448 belongs to the first respondent to go to Virar in Maharashtra. When the dumper reached near Sakwar village, the driver of the dumper had driven the same in a rash and negligent manner, due to which the dumper turned turtle. Ramaswamy (hereinafter referred to as, the deceased) sustained grievous injuries and died on the spot. The Station House Officer, Virar Police Station registered a case in crime No.10005 of 1999 under Sections 304(31), 279, 337 and 338 IPC against the driver of the dumper. By the time of the accident, deceased was aged about 40 years and used to earn Rs.4,500/- per month. The first petitioner is widow, second petitioner is minor son, third petitioner is father and fourth petitioner is mother of the deceased. They are all dependants on the earnings of the deceased. Due to the sudden death of the deceased, the petitioners lost the source of income. The dumper which belongs to the first respondent was insured with the second respondent and therefore, the respondent Nos.1 and 2 are liable to pay compensation of Rs.2,00,000/- to the petitioners with interest and costs.

4. The first respondent filed counter *inter alia* contending that the vehicle involved in the accident was insured with the second respondent and therefore, this respondent is not liable to pay compensation to any of the petitioners. The deceased was working under this respondent purely on temporary basis. There was no rashness or negligence on the part of the driver of the dumper to cause the accident. Hence, the petition may be dismissed.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that this respondent is not liable to pay compensation to the petitioners unless they establish that the driver of the dumper was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as the second respondent is concerned.

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

1) Whether the petitioner sustained injuries in the motor vehicle accident on 05.1.1999 due to rash and negligent driving of 1st respondent's dumper by its driver?
2) Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
3) To what relief?

7. During the course of the trial, on behalf of the petitioners, P.Ws.1 to 12 were examined and Exs.A1 to A30 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 and B2 were marked.

8. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the dumper, which resulted in the death of the deceased, and allowed the

petition in part by awarding compensation of Rs.1,43,000/-. Feeling aggrieved by the judgment and award, the second respondent preferred the appeal.

9. The respondent Nos.2 and 5 herein having received the notice in this appeal did not choose to contest the matter. The appeal against the respondent Nos.1, 3 and 4 dismissed for default. Hence, I am inclined to dispose of the appeal on merits.

10. Heard Sri Kota Subba Rao, learned standing counsel for the appellant – insurance company. He submitted that the Tribunal failed to consider the fact that by the time of the accident, the deceased was travelling as unauthorised passenger in the dumper and therefore, the insurance company is not liable to pay compensation to the petitioners. He further submitted that Ex.B1 policy does not cover the risk of the gratuitous passengers.

11. Now the point that arises for consideration in this appeal is:

> *Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent – insurance company?*

Point:

12. The Tribunal, basing on the oral, documentary evidence and other material available on record, arrived at a conclusion on issue No.1 that the accident occurred due to rash and negligent driving of the driver of the dumper. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. I am fully agreeing with 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 dumper, which resulted in the death of the deceased. Learned Standing Counsel for the insurance company has not disputed the quantum of compensation awarded by the Tribunal.

13. As per the averments made in the petition, by the time of the

accident the deceased was working as labourer under the first respondent, which is a construction company having its Branch Office in the State of Maharashtra. Admittedly the deceased belonged to Mahaboobnagar District. As per the averments made in the petition, by the time of the unfortunate death, the deceased was engaged as a coolie for cutting stones. The first respondent filed counter admitting that by the time of the accident the deceased was working as a temporary employee under the first respondent. The fact remains that at the time of the accident, the petitioner was travelling in the dumper in order to attend stone cutting work. The material available on record clinchingly establishes that by the time of the accident, the deceased was working as labourer under the first respondent. The dumper which involved in the accident belongs to the first respondent. It is an admitted fact that the dumper was duly insured with the second respondent as on the date of the accident.

14. As per the testimony of R.W.1, by the time of the accident, the deceased was travelling in the dumper as an unauthorized passenger. Except the self-served testimony of R.W.1, there is no other evidence much less legally admissible evidence to establish that by the time of the accident, the deceased was travelling in the dumper as a gratuitous passenger or an unauthorized passenger. On the other hand, the material available on record clinchingly establishes that by the time of the accident, the deceased was working as a coolie under the first respondent. There is no whisper in the testimony of R.W.1 that Ex.B1 policy does not cover the risk of workmen engaged in the dumper by the first respondent. Absolutely there is no material on record to establish that the first respondent had violated the terms and conditions of the policy by permitting the deceased to travel in the dumper as unauthorized passenger. A person, who is entitled to claim compensation under the Workmen's Compensation Act, is entitled to approach the Commissioner for Workmen's Compensation or to file

petition under Section 166 of the Motor Vehicles Act.

15. The first respondent being the owner of the vehicle is vicariously liable for the wrongful acts done by his employee. The second respondent being the insurer of the offending vehicle has to indemnify the liability of the first respondent unless the first respondent has violated the terms and conditions of the policy. As observed earlier, the first respondent has not violated the terms and conditions of the policy in order to absolve the liability of the second respondent–insurance company. The Tribunal, while considering all these aspects and placing reliance upon the decision in **Satpal Singh v Union of India**[1], rightly arrived at a conclusion that the insurance company has to indemnify the liability of the first respondent. The petitioner has not filed any appeal or cross-objections seeking enhancement of quantum of compensation and therefore, this court is not inclined to modify the quantum of compensation awarded by the Tribunal. Accordingly, the point is answered.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 10.3.2015
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[1] (2000) 1 SCC 237