

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1802 OF 2005

JUDGMENT:

M/s. Oriental Insurance Company Limited, which is respondent No.2 in M.V.O.P. No.97 of 2001 and respondent No.4 in M.V.O.P. No.119 of 2001, preferred the instant appeal aggrieved of the order and decree, dated 29-04-2005, in M.V.O.P. No.119 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - VIII Additional District Judge (Fast Track Court), Chittoor, challenging apportionment of liability to the extent of 50% on it, by granting a sum of Rs.1,97,000/- towards compensation by apportioning the same in 70:30 ratio between the wife and the mother of B. Erraiah, who died in the accident.

2 .The Oriental Insurance Company preferred the instant appeal contending that B. Erraiah, who died in the accident in the instant case, was an unauthorised passenger travelling in the goods vehicle.

3 .The appellant herein - M/s. Oriental Insurance Company Limited, Tirupati, which is insurer of the lorry bearing No.TN-23-D-8755, is respondent No.4 in the O.P. before the Tribunal, while respondent No.1, who is the wife of B. Erraiah (who died in the accident in the instant case) and respondent No.5 in M.V.O.P. No.97 of 2001, is the petitioner and respondent Nos.2 and 3, who are owner and insurer, respectively, of the lorry bearing No.AP-12-T-5128, are respondent Nos.1 and 2 respectively, and respondent No.4, who is owner of the lorry bearing No.TN-23-D-8755, is respondent No.3, and respondent No.5, who is the mother of B. Erraiah and petitioner in M.V.O.P. No.97 of 2001, is respondent No.5.

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

5. (a) The facts, in brief, are that on 26-03-2000, while B. Erraiah, along with his cousin, after participating in the *shandy*, at Piler, wherein sheep and goats will be purchased and sold, having purchased a *ram*, boarded the lorry bearing No.TN-23-D-8755 to return to his village and when the driver of the lorry was proceeding, another lorry bearing No.AP-12-T-5128, driven in a rash and negligent manner at high speed, dashed against the lorry, in which Erraiah was travelling, and due to said collision, Erraiah died instantaneously along with both drivers of the lorry and another person.

(b) The petitioner claims that the accident had occurred due to negligence of the driver of the lorry bearing No.AP-12-T-5128. Even the Station House Officer, Pakala Police Station also registered a case in Crime No.37 of 2000 against the driver of the lorry bearing No.AP-12-T-5128 and charge sheet was also filed in C.C. No.194 of 2000 on the file of Judicial Magistrate of First Class, Pakala. Therefore, the petitioner sought Rs.2,00,000/- in M.V.O.P. No.119 of 2001 while respondent No.5, who is petitioner in M.V.O.P. No.97 of 2001 sought Rs.1,50,000/- in the said O.P.

6 . Respondent No.1, owner of the lorry bearing No.AP-12-T-5128, remained *ex parte* before the Tribunal. (Respondent No.1 appeared in MVOP No.97)

7. Respondent Nos.2 to 4 contested the claim petition by raising various pleas and, in fact, attributed rash and negligent driving

against the drivers of each other vehicle and also violation of terms and conditions of the insurance policy, and, respondent Nos.3 and 4 contended that they are unnecessarily made as parties.

8 . Based on the above pleadings, the Tribunal framed the following three (3) issues in the direction of fixing responsibility for the accident:

“1. Whether the accident occurred due to the rash and negligent driving of the lorry by the driver of the R.1 or the driver of R.3 or both?

2. Whether the petitioner or the R.5 or both are entitled to compensation for the death of Erraiah ? and if so, to what extent and in what proportion and from whom ?

3. To what relief ?”

9 . The Tribunal has taken up both the O.Ps. together and disposed of the same by the common order.

10. In the former O.P., the Tribunal framed the following four (4) issues in the direction of fixing responsibility for the accident:

“1. Whether the accident occurred due to the rash and negligent driving of the R.1’s lorry by its driver or the rash and negligent driving of R.3’s lorry by its driver or both ?

2. Whether the petitioner is entitled to any compensation for the death of Erraiah and if so, to what extent and from whom ?

3. Whether the petitioner is not entitled to any further amount than that awarded in O.P. No.119 of 2001 ?

4. To what relief ?”

11. The Tribunal has taken up issue No.1 in both the O.Ps. together, and, finding from the charge sheet under Ex.A-2 that the accident had taken place due to rash and negligent driving of drivers of both the lorries, though, the charge-sheet was laid only against the driver of the lorry bearing No.AP-12-T-5128, fixed the liability equally on owners and insurers of both the lorries, and, thus, granted a total sum of Rs.1,97,000/- by apportioning the same between the petitioner and respondent No.5 in 70:30 ratio, while dismissing O.P. No.97 of 2001 filed by the mother of Erraiah, who is hereinafter referred to as ‘deceased.’

12. It is the aforesaid order, which is under challenge in the instant appeal by respondent No.4, insurer of the lorry bearing No.TN-23-D-8755 belonging to respondent No.3, contending in the grounds of appeal that the Tribunal, somehow, failed to see that the insurance policy does not cover the risk of unauthorised passengers in the transport vehicle and the deceased was travelling in the lorry as an unauthorised passenger, and, therefore, the Tribunal ought not to have fastened half of the liability on it. It is also stated that the finding recorded by the Tribunal basing on the judgment of this Court in **Deddula Padmavathi and others v. Maddela Srinivasa Rao and another**, that when the deceased travelling in the vehicle as owner of the goods, he is to be treated as third party, is totally incorrect, and, thus, the order under challenge is against the decision of the Hon’ble Apex Court in **National Insurance Company Limited v. Baljit Kaur and others** and **National Insurance Company v. Subbayamma and others**, and, therefore, sought to set aside the order and decree under challenge so far as respondent No.4 (appellant) is concerned.

13. Heard Sri M. Venkateshwarlu, learned counsel for respondent No.4 (appellant), and Sri K. Suresh Kumar Reddy, learned counsel for the petitioner (respondent No.1).

14. There is no representation for respondent No.5, who is mother of the deceased.

15. Despite service of notice, none appears for respondent Nos.2 to 4.

16. Perused the order under challenge and the evidence, both, oral and documentary, let in by the respective parties.

17. A perusal of Exs.A-1 and A-2 reflect that the deceased boarded the lorry which was already loaded with cement and, thus, it is abundantly clear that he cannot be construed as owner of the goods and at the most he can be construed as a midway passenger boarding the goods vehicle, and, therefore, there cannot be any doubt that he was an unauthorised passenger travelling in the goods vehicle. It is no doubt true that the deceased was returning to his village in the lorry, with a *ram* in the lorry, but, when the lorry was already loaded with cement and transporting the same from a particular place to its destiny, the question of his being construed as owner of goods does not arise, more particularly, to bring him within the fold of Section 147 of the Motor Vehicles Act. In such an event, certainly, irrespective of the fact that the insurance company, the appellant herein, has let in evidence or not, no liability can be fastened on it, and, therefore, the appeal is to be allowed to that extent.

18. Therefore, the liability of 50% fastened on respondent No.4 -

Oriental Insurance Company (appellant) by the Tribunal is set aside. Consequently, respondent No.3, who is owner of the lorry bearing No.TN-23-D-8755, is liable to pay 50% of the compensation and the other 50% of compensation by respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AP-12-T-5128.

19. With the directions as above, the appeal is allowed to the extent indicated above confirming the order under challenge in all other aspects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 23, 2015.

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