HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.536 of 2005

JUDGMENT:

The third respondent-United India Insurance Company Limited is the appellant herein. Aggrieved of the order dated 20.10.2004, in O.P.No.26 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, West Godavari District at Eluru (for short, 'the Tribunal') whereby and whereunder a sum of Rs.1,50,480/- with interest @ 9% per annum is granted for the death of Srinivasarao @ Srinu, the instant appeal is preferred.

2. The appellant herein is the 3rd respondent-insurance company in the original petition before the Tribunal, while respondent Nos.1 and 2 herein, who are the driver and owner of tractor bearing No.AP-37-U-1782 were respondent Nos.1 and 2 respectively, and respondent Nos.3 to 7 herein were petitioner Nos.1 to 5 respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 07.07.1998, the

1st respondent who was the driver of the tractor bearing No.AP-37-U-1782, belonging to the 2nd respondent, was attending "Dammu work" in the fields of Sri M.Apparao of Vegeswarapuram. On the way, wheels of the tractor drowned in the waste water 'bodhi' near Tailam Ramarao's fields. The said Srinivasarao/deceased and some others were standing nearby the said tractor watching the 1st respondent, who was negligently trying to take out the tractor from the said bodhi. While so, the tractor slipped and fell on the deceased, as a result, he died instantly at 11.00 P.M. or 11.30 P.M. on 07.07.1998. The petitioners' claim that the concerned police, however, created a false story that the deceased was driving the tractor, which fell on him resulting in his death. They stated that the deceased was 36 years old on the date of the accident earning Rs.1,000/- per month as labourer. They being the wife, minor children and mother of the deceased respectively, sought compensation of

Rs.3,00,000/- towards loss of dependency from respondent Nos.1 to 3, who are the driver, owner and the insurer of the tractor respectively.

5. The 1st and 2nd respondents filed counter contending that the 1st respondent was having valid driving license and the said tractor was being used for agricultural operations and concerning the accident, they support the case of the petitioners while claiming that the tractor was insured with the 3rd respondent-insurance company, sought to fasten liability on the

3rd respondent and to dismiss the claim against them.

6. The 3rd respondent-insurance company filed counter. While opposing the claim has taken a specific stand that the death of the deceased occurred due to his own negligence as he operated the tractor at the relevant time, but the petitioners suppressing the real facts approached the Tribunal with a deviated version and, therefore, sought to dismiss the claim exonerating it from its liability.

7. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the 1st petitioner herself was examined as P.W.1 besides examining PWs.2 and 3 and marked Exs.A.1 to A.3. On behalf of the respondents, RW.1 was examined and marked Exs.B.1 to B.3.

8. The Tribunal, on appraisal of evidence let in by the petitioners on issue No.1, while tendering a finding on the aspect of negligence of the deceased, which plea was taken by the

3rd respondent, observing that the fact remains that the deceased who was a third party died in the motor accident and, thus, decided the issue in favour of the petitioners. On issue No.2, the Tribunal placing reliance on decisions in ***Kashiram Yadav v. Oriental Fire and General Insurance Company*** and ***United India Insurance Company Limited v. Lehru and Others***, observing that the insurance company cannot escape its liability to third parties, treating the deceased as third party by excluding the contents of Ex.A.1, held that the 3rd respondent-insurance company is liable to pay compensation. So far as determination of amount is concerned, by applying multiplier '14.81' based on ***Bhagawandas v. Mohd. Arif***, as the deceased was aged 35 years on the date of accident and the monthly earnings at Rs.1,000/-, deducted 1/3rd therefrom and arrived at Rs.8,000/- per annum towards contribution to the family and determined the compensation of Rs.1,50,480/- which includes Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses.

9. It is the said order which is under challenge, in the instant appeal preferred by the insurance company mainly aggrieved of the finding recorded to the effect that the deceased was a third party by discarding the stand taken by the 3rd respondent-insurance company.

10. In the grounds of appeal, it is stated that the Tribunal did not properly appreciate the evidence on record through Exs.A.1 and A.3 which are copies of FIR and MVI's report in crime No.44 of 1998 which relates to the accident in the instant case, which shows that the deceased, Srinivasa Rao @ Srinu drove the tractor in question at the time of accident, himself took the risk and accordingly, legal heirs of the deceased, who were petitioners, are not entitled to compensation. It is also stated that the petitioners obtained judgment and decree fraudulently by stating that the 1st respondent drove the tractor at the time of accident in collusion with the 2nd respondent-owner of the tractor in question. It is also stated that the petitioners have failed to file the driving license of the deceased. It is also contended that PW.3, who is the son of the owner of the tractor, lodged the complaint before the police stated that the deceased drove the tractor bearing No.AP-37-U-1782, when it was struck up in the mud, while he was trying to bring out the tractor from the mud it turned upside down, as a result of which, the deceased fell under the tractor and died. Therefore, the appellant-insurance company sought to set aside the order and decree so far as the "insurance company" is concerned.

11. Heard Sri V. Sambasiva Rao, learned counsel for the appellant and Sri B. Parameswara Rao, learned counsel for the petitioners/respondent Nos.3 to 6. Despite service of notice, none appears for respondent Nos.1 and 2.

12. The question that arises for consideration is whether the order under challenge is liable to be set aside?

13. Perused the order under challenge and oral and documentary evidence let in by respective parties. Admittedly, PW.1 is not an eye-witness. PW.2 who is said to be an eye-witness supported the version of the petitioners. In his cross-examination, he admits that Sri M.Adinarayana, who is his maternal uncle, gave report in regard to the said accident. The other suggestion made to him touching vital aspects of the

case were denied by him. However, the evidence of PW.3 attains significance in view of the controversy between the parties, who is the son of the 2nd respondent-owner of the tractor. PW.3 supports the version of the petitioners attributing negligence to the 1st respondent for the death of the deceased. Even in his chief-examination, he made an attempt to explain away the contents of Ex.A.1 by stating that when himself and his father went to Tallapudi police station and informed the police about the accident and requested them to help them in the matter, the police asked him to sign on a blank paper and also told him to pay Rs.4,000/- to his driver towards expenses on which he gave Rs.3,000/- and left him there. When he was thoroughly pursued in his cross-examination, he admits that he gave report to the police against the said accident, which was registered as Ex.A.1-FIR. No doubt, he denied the suggestion that FIR-Ex.A.1 was registered as per his report, but, certainly, that would not affect the answers he has given in the above that he gave report to the police in regard to the accident, which was registered as Ex.A.1-FIR. This answer gains much prominence in the context of assessing the negligence of which of the persons, the accident had occurred resulting the death of the deceased. A perusal of Ex.A.1 shows that the accident had occurred on 07.07.1998 at about 11.30 PM and it was reported in the police station at 10.00 AM on 08.07.1998 by Mathireddi Adinarayana, who is no other than PW.3. The statement made before the concerned SHO contains all relevant details and what is of utmost significance is that the deceased when attempted to take out the tractor from Bodhi, negligently operated it, resulting the tractor turning upside down and he fallen under the tractor. Since, this version was first in point of time recorded by the police on the basis of the report given by the son of the 2nd respondent, who is examined as PW.3, the genuineness of that statement cannot be doubted on the ground that he was an eye-witness to the accident and spoken to a varied version in his deposition. The very fact that PW.3 has given a complete go-bye to the version made to the police, first in point of time and stuck to a new version completely varying with it, itself speaks that with an ulterior motive to help the petitioners, PWs.2 and 3 and the 2nd respondent created an incorrect stand so as to project the deceased as a third party to claim compensation from the insurance company. The Tribunal without assessing the evidence of PW.3 in proper perspective believed the version of the petitioners discarding the aforementioned circumstance touching Ex.A.1 without assigning any convincing reasons. Therefore, the reasoning adopted by the Tribunal in appreciating the evidence of PWs.1 to 3 and discarding the version first in point of time recorded in Ex.A.1 made by PW.3, is certainly, not in accordance with the established principles of appreciation of evidence. Therefore, that finding recorded by the Tribunal is legally infirm and cannot sustain. Therefore, that finding recorded by the Tribunal is hereby set aside, in which event, the insurance company cannot be fastened with liability.

14. In view of the aforesaid reasons, the appeal is allowed to the extent of exonerating the liability of the insurance company. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 19.02.2015.

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