

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

**M.A.C.M.A.No.1124 of 2005**

**JUDGMENT:**

Having got aggrieved by the order dated 21.02.2005, in O.P.No.98 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- V Additional District Judge (Fast Track Court), Anantapur, whereby and whereunder a sum of Rs.96,000/- was granted, for the death of the son of the petitioners in an accident, as against the claim of Rs.1.00 lakh, laid under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules'), exonerating the second respondent – Insurance Company, the instant appeal is preferred by the petitioners.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.P.

The facts, in brief, are that, on 06.06.1999, the deceased minor boy, along with another, was proceeding to Talagasupalli Village with the tractor bearing No.AP02-T-5622 for tilling the land and at about 7.15 a.m, when they reached N.H.7 road at Thimmampeta cross road, since the driver of the tractor drove it at a high speed, he lost control over the vehicle and dragged towards the right side of the road and turned upside down and, as a result, the minor boy, sitting beside the driver of the tractor, fell down and died instantaneously. A crime was also registered by the Station House Officer, Garladinne Police Station, against the driver of the tractor for the offence under Section 304A IPC. The petitioners claiming that the deceased was working under the first respondent, and employed by the first respondent as a coolie, sought joint and several liability against the insured and insurer for the above said sum.

The first respondent filed counter denying the allegations mentioned in the petition, including the stand of the petitioners that the deceased was employed by him and died during the course of his employment under him. However, contending that the tractor since insured with the second respondent sought to exonerate him. During proceedings, the first respondent did not participate and remained *ex parte*.

The second respondent opposed the claim, and taken a specific plea that there

was violation of the terms and conditions of the policy and no liability can be fastened to pay compensation, since the deceased was sitting by the side of the driver of the tractor and that the accident was due to the negligent driving of the tractor driver and the deceased can be construed only as an unauthorized passenger, and not as a third party or as a coolie, thus, resisted the claim petition.

The Tribunal framed the following three issues:

“ 1. Whether the accident occurred on 06.06.1999 due to the rash and negligent driving of the tractor bearing No.AP02-T-5622 by its driver, the tractor turned turtle and caused the death of the deceased?

2. Whether the petitioners are entitled to compensation and if so to what amount and from which respondent?

3. To what relief?”

During enquiry, the first petitioner examined himself as PW.1 besides examining an eye-witness to the accident as PW.2 and marked Exs.A.1 to A.4, whereas, on behalf of the Insurance Company, RW.1, an employee from its local branch, was examined and marked Ex.B.1, copy of the Insurance Policy.

On issue No.1, the Tribunal, while considering the evidence of PW.2, and the documentary evidence, more particularly, Exs.A.1 to A.4, held that due to the rash and negligent driving of the tractor driver, the accident occurred resulting in the death of the deceased. On issue No.2, the Tribunal, considering the evidence of RW.1, and the age of the deceased minor boy as 14 years, though, determined the compensation at Rs.96,000/-, as regards liability, placing reliance on the decisions referred to by the learned counsel respectively, in paragraph Nos.‘12’ and ‘13’, and also examining the policy, Ex.B.1, recorded the finding, that the question of either it be the owner of the goods or its authorized representative being allowed to travel on the tractor in view of Rule 252(5) of the Rules would not arise, and held that the question of making the Insurance Company liable to pay compensation does not arise, more particularly, failure to examine the first respondent to prove that he did employ the deceased on the date of accident, and fixed the liability on the first respondent, owner of the tractor.

It is the aforesaid order which is under challenge contending in the grounds of appeal that the Tribunal did not follow the multiplier as prescribed under the second Schedule to the Act, that the Tribunal ought to have fastened the liability on both the respondents and ought not to have fixed the liability exclusively on the owner, since policy, Ex.B.1, covers the risk of six coolies and the tractor was used for agricultural purpose as per the use mentioned in Ex.B.1, which can be gathered from the contents of Ex.A.3 and that, since the first respondent remained ex parte, the Tribunal ought to have drawn an adverse inference and ought to have granted Rs.1.00 lakh by fastening liability on the second respondent also.

Heard Sri K.Maheswara Rao, learned counsel for the appellants, and Sri V.Srinivasa Rao, learned counsel for the second respondent – United India Insurance Company Limited. No representation for the first respondent.

Perused the order and evidence on record, both, oral and documentary, let in by the petitioners, and the second respondent – Insurance Company.

The only question that arises for consideration is whether any liability can be fastened on the second respondent – Insurance Company?

As seen from the evidence on record, it is abundantly clear that the deceased was aged 14 years and was sitting beside the driver of the tractor and the tractor was moving without trailer. As seen from the contents of the counter filed by the first respondent, he disowned the stand of the petitioners that the deceased was employed under him, in which event, a duty was cast on the petitioners to summon and examine him to prove their stand but it is not for the Insurance Company to summon and examine the first respondent. It is no doubt true that a premium of Rs.90/- was paid for covering the risk of six coolies but the trailer was not attached at the time of taking place of the accident and further fact that the deceased was sitting by the side of the driver and still further fact that the rash and negligent driving of the tractor driver resulting in the death of the deceased are all sufficient enough to hold that the finding recorded by the Tribunal exonerating the second respondent – Insurance Company does not suffer from any infirmity warranting interference and, therefore, confirming the said finding, the appeal is dismissed for want of merit.

Accordingly, the Appeal is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

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**A.SHANKAR NARAYANA,J**

Date: 24.03.2015

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