

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.141 OF 2013

JUDGMENT:

1. This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 20.10.2011 passed in O.P.No.310 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar, wherein and whereby, an amount of Rs.1,00,000/- was awarded with interest @ 7.5% per annum as against the claim of Rs.1,00,000/-.

2. The parties to this appeal are hereinafter referred to as they are arrayed in O.P. before the Tribunal to avoid confusion.

3. The facts leading to filing of the present appeal, briefly, are as follows: On 04.03.2006, One S. Chinna Sailu, and others were engaged as coolies on the tractor and trailer bearing No.AP-22/D-8586/8587 for the purpose of crushing the groundnut. When the said Chinna Sailu attending the coolie work, the driver of the tractor and trailer bearing No. AP-22/D-8586/8587 (for short 'the crime vehicle') drove the same in a rash and negligent manner and dashed the said Chinna Sailu. Due to the injuries, Chinna Sailu (hereinafter referred to 'the deceased') sustained grievous injuries on various parts of the body and took treatment as in-patient in Osmania Government Hospital, Hyderabad and died on 08.03.2006. The Station House Officer, Bomraspet police station, registered a case in Crime No.13 of 2006 under Section 304-A IPC against the driver of the crime vehicle. By the time of the accident, the deceased was aged about 35 years and used to earn Rs.100/- per day by attending the coolie work. The first petitioner is the wife and the petitioners No.2 to 4 are the children of the deceased and petitioner No. 5 is the mother of the deceased. The petitioners are the dependants on the income of the deceased. The crime vehicle belongs to the first respondent was

insured with the second respondent company w.e.f. 19.01.2006 to 18.01.2007 vide policy No.050203/47/05/00433. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent filed counter denying the manner of the accident, age and income of the deceased. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. The second respondent filed counter denying the averments made in the petition including the manner of accident, age and income of the deceased. The driver of the crime vehicle was not having valid and effective driving licence as on the date of accident, therefore, there is no obligation on the part of the second respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

- i. Whether the death of the deceased Chinna Sailu occurred due to the accident dated 04.03.2006 on account of rash and negligent driving of the tractor bearing No.AP-22/D-8586 & 8587 by its driver?
- ii. Whether the petitioners are entitled to claim compensation, if so, to what amount and against whom?
- iii. To what relief?

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7. During the course of trial, on behalf of the petitioners, P.Ws.1 & 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, no oral evidence was let in but Ex.B1 and Ex.B2 were marked.

8. On appraising the oral and 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 crime vehicle, which resulted in the death of the deceased, and allowed the petition by awarding compensation of Rs.1,00,000/- directing the respondents No.1 and 2 to pay the same jointly and severally with costs and interest @ 7.5% p.a. from the date of petition till the date of realisation. Feeling aggrieved by the judgment and decree passed by the tribunal, the second respondent-Insurance company preferred the present appeal.

9. The contention of the learned counsel for the appellant-second respondent is two fold.

- i. The finding of the tribunal that the tractor and trailer bearing No. AP-22/D-8586/8587 involved in the accident is not supported by oral or documentary evidence; and
- ii. The tribunal has failed to consider that the claimants have falsely implicated the crime vehicle in order to claim compensation from the second respondent.

10. **Per contra** the learned counsel for the claimants submitted that the second respondent has not adduced any oral or documentary evidence to substantiate the stand taken by it. He further submitted that there are no grounds much less valid grounds to interfere with the well-considered judgment and award of the tribunal.

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

1. **Whether the tractor and trailer bearing No. AP-22/D-8586/8587 was not involved in the accident that occurred on 04.03.2006?**

POINT :

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12. To prove the case of the petitioner, the first petitioner herself

was examined as P.W.1 and marked Exs.A1 to A4. To prove the manner of the accident, PW.2 was examined. Admittedly, PW.1 is not an eye-witness to the accident, therefore, her testimony is no way helpful to prove the manner of the accident. As seen from the testimony of P.W.2, on 04.03.2006 himself, deceased and others were engaged as coolies for crushing the groundnut. His testimony further reveals that when the deceased was attending the coolie work, the driver of the crime vehicle had driven the same in a rash and negligent manner and dashed the deceased. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. The oral testimony of PW.2 clearly reveals that the accident occurred due to rash and negligent driving of the driver of the crime vehicle. As per the recitals, Ex.A1-F.I.R., the crime vehicle was involved in the accident on 04.03.2006. As per the recitals of Ex.A2-inquest report and Ex.A3 - Post-mortem certificate, the deceased died due to injuries sustained in a road accident that occurred on 04.03.2006. The oral testimony of PWs.1 and 2 is fully supported by the recitals of Exs.A1 to A4, so far as the manner of the accident and factum of death of the deceased is concerned.

13. It is not the case of the first respondent that the crime vehicle, which belongs to him, did not involve in the accident. If really, the crime vehicle was not involved in the accident, what prevented the second respondent to appoint an investigator to investigate into the matter and submit the report.

14. For one reason or other, the second respondent has not taken any steps in this direction. The respondent did not examine anybody to substantiate the stand taken by it. A perusal of Ex.B1 clearly reveals that the crime vehicle, which belongs to the first respondent, was insured with the second respondent company w.e.f. 19.01.2006 to 18.01.2007 and the policy was in force as on the date of the

accident.

15. Mere taking of the plea in the counter by itself would not amount to proof of the stand taken by the second respondent. The second respondent did not choose to adduce rebuttal evidence to demolish the stand taken by the petitioner.

16. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased. There are no grounds much less valid grounds to upset the findings recorded by the Tribunal on issue No.1. It is an admitted fact that the claimants claimed an amount of Rs.1,00,000/-. However, the tribunal, taking into consideration the material available on record, awarded an amount of Rs.1,00,000/- to the claimants. The amount of compensation awarded by the tribunal is just and reasonable. Hence, there are no grounds much less valid grounds to interfere with the well-considered judgment of the tribunal and the appeal lacks bonafides and merits.

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

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T.SUNIL CHOWDARY, J

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Date:20-08-2015
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