

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1509 OF 2009

JUDGMENT:

The petitioners-claimants in O.P. No.1502 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nalgonda (for short, 'the Tribunal'), assailing the order dated 17.12.2004, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') mainly on the ground that the Tribunal went wrong in exonerating the Insurance Company from its liability, though, the violation was not fundamental in nature.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2 herein, who are the owner and insurer of the tractor and trailer bearing registration Nos.AAL 4951 and AAL 4952, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The Tribunal by the aforesaid order, for the death of husband of petitioner No.1 and father of petitioner Nos.2 and 3 and son of petitioner No.4, granted Rs.2,46,000/- fastening liability on respondent No.1-owner of the vehicle alone exempting respondent

No.2-Insurance Company placing reliance on the decision in **Sri Pramod Kumar Agarwal and others v. Smt. Musthari Begum**¹ directing the Insurance Company initially to deposit and recover the same from respondent No.1-owner.

5. The fact-situation, since admitted by both sides, is unnecessary to refer to. The only controversy relates to that the tractor was supposed to be used for agricultural purpose and that has been the question between the parties. Admittedly, as per the admission made by P.W.2 at the relevant time, the tractor was hired to carry the neem logs on that day and, in fact, the deceased was sitting on the trailer, which was prohibited and the same was taken cognizance by the Tribunal and, thereby, held that the Insurance Company cannot be made liable to pay compensation.

6. Heard Sri Kiran Palakurthi, learned counsel for the appellant-petitioner, and Sri Naresh Byrapaneni, learned Standing Counsel for respondent No.2-Insurance Company. No representation for respondent No.1.

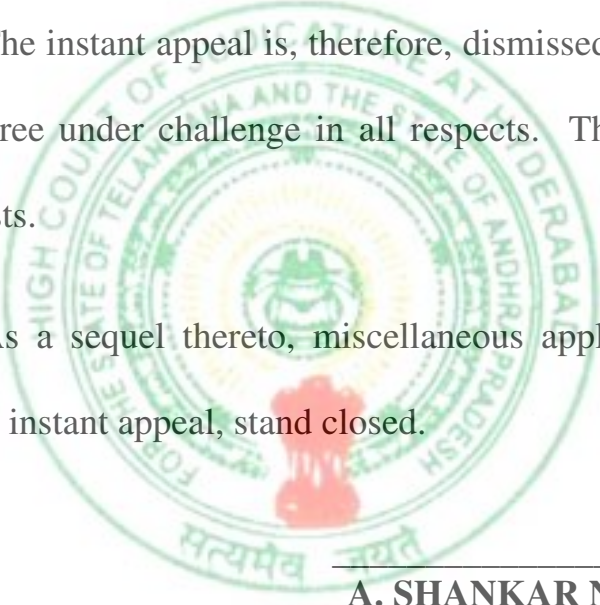
7. During the course of arguments, it is fairly conceded by the learned counsel for the appellant, the violation pointed out by the Tribunal, basing on which the order was passed exonerating the Insurance Company, but however, directing the Insurance Company

¹ 2004(8) S.R.J. 81

to initially deposit the compensation and recover the same from respondent No.1-owner. Hence, the said order and decree cannot be faulted. Even, learned Standing Counsel for respondent No.2-Insurance Company has pointed out that from the admission made by P.W.2, it is clear that the vehicle was hired from respondent No.1, though, there was prohibition to hire the vehicle and the same was used for commercial purpose, but not for agricultural purpose. In that view of the matter, absolutely, there is no merit in the instant appeal.

8. The instant appeal is, therefore, dismissed confirming the order and decree under challenge in all respects. There shall be no order as to costs.

9. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.



A. SHANKAR NARAYANA, J

24th August, 2016

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