

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1340 OF 2009

JUDGMENT:

The Oriental Insurance Company Limited-respondent No.2 in O.P. No.612 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Gooty (for short, 'the Tribunal'), aggrieved by the order and decree dated 13.04.2007, whereby and whereunder, the Tribunal fastened joint and several liability for payment of Rs.2,45,000/- with interest at 7.5% per annum for the death of one B.Dastagiri, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), on the ground that the Tribunal has not properly appreciated the evidence on record, more particularly, the evidence of R.W.1 was not at all looked into.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent Nos.1 to 5 herein, who are the wife, children and parents of the said Dastagiri, are the petitioners, and respondent No.6 herein, who is owner of the auto-rickshaw bearing registration No.AP 02U 6034, is respondent No.1 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 facts of the case are not in dispute.

5. Heard Sri N.Mohan Krishna, learned Standing Counsel for the appellant-insurer, and Smt. N.Sasikala, learned counsel for respondent Nos.1 to 5-petitioners. Though, respondent No.6 was served, none appears for him.

6. The only submission made by the learned counsel for respondent No.2-Insurance Company (appellant) is that despite the fact that R.W.1 was examined, whose evidence has been read over by the learned counsel, no-where a reference was made about the evidence of R.W.1 in the order of the Tribunal and, thereby, granted compensation and if the evidence of R.W.1 was considered in view of the delay in lodging the F.I.R., nearly a month after taking place of the accident, certainly, no liability could have been fastened on the Insurance Company.

7. Per contra, learned counsel for the petitioners (respondent Nos.1 to 5 herein) would submit that P.W.2, who incidentally lodged the F.I.R., was examined before the Tribunal as an eyewitness, and that has been the reason why the Tribunal neither considered the evidence of R.W.1 nor referred to his evidence in the order under

challenge.

8. Perused the order and the evidence on record. It is an important aspect which requires some thought that being when the delay in lodging the complaint is inordinate, the very involvement of the vehicle requires to be proved. In which case, since the charge sheet was laid, the investigating officer is the best witness to speak as to how the crime was detected and about the involvement of the vehicle as well as the driver of the vehicle. For these two reasons, it is necessary to remand the matter to the Tribunal for fresh disposal, by affording chance to both sides to lead further evidence in addition to the evidence on record, within a period of six (6) months from the date of receipt of a copy of this judgment. Concerning the amount deposited by the Insurance Company and withdrawn by the petitioners, the Tribunal would make appropriate orders thereon, while disposing of the claim petition.

9. With the directions and observations as indicated above, the instant appeal is allowed setting aside the decree and order passed by the Tribunal in all respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

10th August, 2016

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