HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 2116 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioners in MVOP No.372 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal – cum - I Additional District Judge, Guntur (for brevity 'the Tribunal'), dissatisfied with the award of Rs.3,09,400/- with interest @ 7.5% per annum, as compensation, as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988. They also requested to grant interest @12% per annum.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

3. The fact-situation would show that while Naidu Venkatappaiah (hereinafter referred to as 'the deceased'), whose wife, children and mother are petitioner Nos.1 to 5 respectively, was returning to his house situated in Achutapuram Village from Kuchinapudi Village, on bicycle, on 15.02.2007 at 4.30 p.m., a tractor and trailer bearing Registration Nos.AP 7TU 0973 and AP 7TU 0974 belonging to the first respondent driven at a high speed in a rash and negligent manner came from behind the cycle and dashed it, as a result of which, the deceased fell down and died instantly. After observing all due formalities, the authority concerned laid charge sheet against the driver of the tractor and trailer. The petitioners, claiming that the deceased being a fisherman by profession was earning Rs.6,000/- per month, sought a sum of Rs.3,50,000/- towards

compensation. The first respondent remained *ex parte*. The second respondent –Insurance company opposed the claim by raising various pleas.

4. The Tribunal basing on the said pleadings framed three issues. During the enquiry, the first petitioner besides examining herself as P.W.1 has examined an eyewitness, by name, Chippala Bikshalu as P.W.2 and marked Exs.A.1 to A.5. On behalf of the second respondent, R.W.1 was examined and Exs.B.1 to B.3 were marked.

5. On perusal of evidence on record, the Tribunal recorded a finding on issue No.1 holding that the accident occurred due to rash and negligent driving of the driver of the tractor resulting in the death of the deceased. On issue No.2, the Tribunal basing on Ex.A.3-post mortem report, took the age of the deceased as 35 years and the income at Rs.2,700/- per month treating him as a fisherman, though, no legally acceptable evidence was forthcoming; deducted 1/3rd towards the personal living expenses of the deceased; took the remainder, Rs.21,600/- per annum towards the contribution to his family; applied multiplier '14' and arrived at Rs.3,02,400/- towards loss of dependency. Besides the same, the Tribunal has also awarded Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate, and Rs.2,500/- to the first petitioner towards loss of consortium, making a total of Rs.3,09,400/- with interest @ 7.5% per annum thereon with relevant directions as to apportionment of compensation as well as withdrawal of the respective shares of the claimants. While

dismissing the claim petition against the second respondent – Insurance company, the Tribunal fastened liability on the first respondent – owner of the crime vehicle. On the ground that the amount granted by the Tribunal was not fair and adequate, the petitioners preferred the present appeal seeking enhancement.

6. Heard Sri Ch. Ravindra Babu, learned counsel for the appellants. Despite service of notice, respondents 1 and 2, owner and insurer respectively, none appears for them.

7. Learned counsel for the appellants would submit that the Tribunal went wrong in holding that the driver was possessing driving licence to drive only non-transport vehicle, but the tractor and trailer at the relevant time was being used as a transport vehicle. Therefore, it amounts to violation of terms and conditions of the policy. The Tribunal while recording the finding as to the violation of terms and conditions of policy, recorded that, though, the policy covers the tractor and trailer for non-transport purpose only, the first respondent - owner of the vehicle has used the tractor for transport purpose, in contravention of the terms and conditions of the policy. Basing on the evidence of R.W.1, the Tribunal observed that the first respondent has taken the policy for the vehicle for its use for 'agricultural purpose' at the relevant time, but it was being used for non-agricultural purpose. It appears that the second respondent –insurer is not certain as to whether it was complaining violation of the terms and conditions of the policy basing on the use of the vehicle or basing on the licence held by the driver at the time of driving the tractor and trailer.

8. A perusal of the impugned judgment narrating the contents of the counter would not show that any specific plea was taken touching the violation based on the 'use' of vehicle or based on the driver not possessing valid driving licence to drive a particular type of the vehicle and no issue was settled therefor. This apart, the Insurance Company has examined only the officer of the local branch, but has not summoned the officials from the concerned authority to prove the probabilities for which the vehicle was registered. Therefore, the Tribunal appears to have gone wrong in holding that the Insurance Company was not liable to pay the compensation. Further, the violation of the terms and conditions itself is not properly analysed by the Tribunal in para 8 of the impugned judgment. Even otherwise, in view of the decision of the Hon'ble Supreme Court in ***S. Iyyapan v. United India Insurance Company Limited***[1], if the driver possesses one type of driving licence and drives other type of vehicle of the same category, the initial liability can be fixed on the Insurance company and the same can be recovered from the owner. Therefore, respondent No.2 is directed to pay initially the compensation awarded by the Tribunal and recover the same from the owner of the vehicle, the first respondent. However, no absolute liability can be fastened on respondent No.2 - Insurance Company.

9. Concerning the enhancement of compensation, no plea is agitated in the present appeal except requesting to fix liability on the Insurance Company. It is only vaguely pleaded that the Tribunal

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[1] [(2013) 7 SCC 62]

below has failed to award sufficient amount. The difference being Rs.40,600/-, which meets the claim made by the claimants, and also keeping in view, that the dependents are numbering five, the amount of Rs.3,50,000/- can be awarded as against Rs.3,09,400/- awarded by the Tribunal.

10. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra and directing the insurer to initially deposit the compensation amount and recover it from the owner of the vehicle. There shall be no order as to costs.

11. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

Date: 25.11.2016
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