

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1840 OF 2005

JUDGMENT:

The instant appeal is preferred by the National Insurance Company Limited aggrieved by the order and decree, dated 16.05.2005, in M.V.O.P.No.20 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IX Additional District and Sessions Judge, Fast Track Court, Machilipatnam, Krishna District, mainly challenging the finding recorded by the Tribunal while partly allowing the claim laid under Section 163A of the Motor Vehicles Act, 1988 (for short, 'the Act'), that the deceased was travelling in the offending lorry at the time of accident as a cleaner working under respondent No.1 and thereby, sought to set aside the order and decree passed by the Tribunal.

2. The appellant – Insurance Company is respondent No.2, whereas respondent Nos.1 to 4, who are the wife, son, daughter and father of one Polimetla Jesu Hrudayam, who died in the accident, are petitioners and respondent No.5, owner of the offending lorry, is respondent No.1 in the O.P. before the Tribunal.

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

4. The facts as presented by the petitioners in the claim petition are that, on 25.08.2003, when the lorry bearing registration No.ATK-2864 reached Chinatalamalapalli, Hamlet of Pedaparupudi Village at about 05:00 PM, the driver of the said lorry drove it in a rash and negligent manner and to avert the accident, as he suddenly applied breaks, the said Polimetla Jesu Hrudayam, who was a cleaner of the offending lorry, jumped from the body of the lorry and fell down on the road and sustained grievous injuries. He was immediately taken to a private hospital and thereafter, he was shifted to Soumya Apollo Hospital, where the doctor declared him as dead. Crime was registered against the lorry driver in Gudivada Taluk Police Station and after filing charge sheet, the crime report was also filed before the concerned Judicial Magistrate of First Class. Claiming that the deceased was working as a cleaner of the offending lorry, the petitioners sought a total sum of Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the offending lorry, respectively.

5. Before the Tribunal, initially, respondent No.1 filed counter and thereafter, remained *ex parte*. Respondent No.2 – Insurer filed separate counter opposing the claim and disputed its liability to pay the compensation as claimed by the petitioners by contending that the deceased was not working as a cleaner of the offending

lorry, but was travelling in the offending lorry as a passenger at the time of occurrence.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed the following four issues.

- “1. Whether there is rash and negligent driving of the vehicle by its driver?
2. Whether the petitioners are the entitled to claim compensation, if so, to what amount and from which of the respondents?
3. Whether the claim of the petitioners are excessive or not?
4. To what relief?”

7. During enquiry, petitioner No.1 examined herself as PW.1 besides examining one G. Sitharamajaneya Venkata Ramarao, an eye-witness to the occurrence, according to the petitioners, as PW.2 and marked Exs.A1 to A4 to substantiate the claim laid. On behalf of respondent No.2, its local Branch Manager was examined as RW.1 and marked Exs.B1 and B2.

8. On issue No.1, the Tribunal, on analysing the evidence on record, mainly by relying on Section 163A of the Act, according to which provision, negligence is not required to be proved by the claimants, held that due to the rash and negligent driving of the driver of the offending lorry, the accident had occurred occasioning the death of the deceased.

9. On issue No.2, the Tribunal mainly carried away by the evidence of PW.2 and accepted the versions of PWs.1 and 2 and the recitals in Ex.A4 – charge sheet and arrived at the finding that the deceased was working as a cleaner of the offending lorry and thereby, taking the monthly earnings of the deceased at Rs.1,200/-, by rejecting the stand of the petitioners that the deceased was earning Rs.2,000/- per month as salary and Rs.1,500/- per month towards batta, and by applying relevant multiplier, arrived at Rs.1,53,000/- as compensation and has also given suitable directions for apportionment as well as for withdrawal of the amount.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the Insurance Company contending in the grounds that Ex.A1 would reflect that four persons boarded the lorry after completion of 'Dharna' held at Prakasam Barrage, Vijayawada, and the complainant sat in the cabin of the offending lorry and the deceased and others sat on the top of the lorry and as the lorry was driven in a rash and negligent manner, the deceased fell down when he came into contact with the road side branch of the tree and succumbed to injuries and even the panchanama also reflects the same and hence, sought to set aside the order and decree passed by the Tribunal, as the finding recorded by the Tribunal that the deceased is a cleaner of the offending lorry is

absolutely incorrect.

11. Heard Sri Ramachandra Reddy Gadi, learned counsel for the appellant, and Sri G. Anand Rao, learned counsel for respondent Nos.1 to 3. Despite service of notice on respondent Nos.4 and 5, none appears for them.

12. Perused the order under challenge and the evidence, both, oral and documentary, on record.

13. Learned counsel for the appellant would submit that

Ex.A1 – Attested Copy of the F.I.R. and Ex.B1 – Certified Copy of Inquest Report would clinchingly establish that the deceased was travelling as a passenger, but not as a cleaner of the offending lorry at the relevant time, and therefore, the Tribunal was not right in arriving at such a finding and fastening liability on the Insurance Company, though *ex facie* there has been violation of the terms and conditions of the policy.

14. On the other hand, learned counsel for respondent Nos.1 to 3 would contend that the finding recorded by the Tribunal is proper and based on appreciation of evidence on record, more particularly, the contents in the charge sheet and the admission of RW.1 in his cross-examination.

15. Both the learned counsel have referred to the documents on which they have placed reliance to substantiate their respective contentions. A perusal of Ex.A1, which is filed by the petitioners themselves, would clearly go to show that four persons, including the deceased, who belong to the same Village, went to Krishna Barrage and attended the 'Dharna' organized by a political party and while returning to their Village, they have boarded the offending lorry at about 04:00 PM on the same day and while the complainant sat in the cabin of the offending lorry, the deceased and two others sat on the top of the cabin and when the deceased came into contact with the branch of a tree on the road side, he fell down into the body of the offending lorry and sustained head injury and he was shifted to a private hospital at Gudivada, in the same lorry for treatment and from there, he was shifted to Soumya Apollo Hospital in an Ambulance, where he was declared as dead. It is clear from Ex.A1, which version comes into vogue first in point of time, that the deceased and the complainant along with two others belonging to the same Village while returning from 'Dharna', boarded the offending lorry. Though, Ex.A1 was filed by the petitioners themselves, the contents thereof were, somehow, lost sight by the Tribunal and nowhere the Tribunal has discussed about the recitals in Ex.A1 and carried away by the contents mentioned in the charge sheet, which is subsequent in point of time. This

apart, as seen from Ex.B1 - Inquest Report, the contents recorded against coloumn No.15, would clearly show that the deceased was eking out his livelihood by doing coolie work and he along with three others went to Krishna Barrage to attend a 'Dharna' and while returning, they boarded the offending lorry and the accident had occurred in the manner mentioned therein. The Tribunal has not referred to the contents in Ex.B1, despite marking the same, and in fact, the evidence of RW.1 is not favoring the stand of the petitioners, as even in his cross examination, though, he has answered that an Investigating Officer was appointed, no report was filed and expressed his ignorance about the facts of the case, still, the suggestion given to him that the deceased was working as a cleaner and proceeding in the offending lorry at the relevant time as an employee of respondent No.1, was bluntly denied by him. When examined the evidence, more particularly the contents of Ex.A1, which document was filed to substantiate the stand of the petitioners, and Ex.B1, certainly, the contents of charge sheet cannot be construed as having the effect of setting the recitals in Ex.B1, which is preceding the date of charge sheet, at naught.

16. This apart, from a perusal of the list of the witnesses, whose names are mentioned in the memo appended to the charge sheet, it is clear that the name of PW.2 does not find place therein. Thus, it is clear that

PW.2 was set up by the petitioners only to substantiate that the deceased was working as a cleaner at the relevant time employed by respondent No.1, which gets totally falsified and even the case set out in the charge sheet by the Investigating Officer cannot be taken as true, when it contradicts the version in Exs.A1 and B1. Thus, it is clear that the deceased was travelling as a passenger, but not as a cleaner of the offending lorry employed by respondent No.1 at the relevant time. Hence, there is every merit in the appeal.

17. Therefore, the appeal is allowed setting aside the liability fastened on the Insurance Company and so far as other aspects are concerned, particularly, liability fastened on respondent No.1 – owner of the vehicle, the same are confirmed.

18. As seen from the proceeding sheet, this Court by order, dated 17.08.2005, while granting stay, directed the Insurance Company to deposit half of the compensation amount awarded by the Tribunal including costs and interest, and by order, dated 12.04.2007, granted permission to the petitioners for withdrawal of the amount deposited pursuant to the order, dated 17.08.2005. In that view of the matter, it would be reasonable to direct the Insurance Company to recover the amount deposited by it and withdrawn by the petitioners from the owner of the offending lorry, who is respondent No.1 in the O.P. The

petitioners are entitled to recover the balance amount from the owner of the lorry, as the liability fastened on the Insurance Company is set aside. There shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J

March 04, 2016.
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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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