

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.3074 OF 2005

JUDGMENT:

Respondent No.2 - United India Insurance Company Limited, Anantapur, preferred the instant Civil Miscellaneous Appeal challenging the order and decree, dated 06-05-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge (Fast Track Court), Anantapur, in O.P. No.91 of 2002, whereby and whereunder, an amount of Rs.2,02,000/- was granted towards compensation by the Tribunal to respondent Nos.1 to 4 (petitioners) as claimed by them under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellant herein and respondent No.5, who are insurer and owner, respectively, of the Tata 407 Turbo that involved in the accident, are respondent Nos.2 and 1, respectively, in the O.P. before the Tribunal, while respondent Nos.1 to 4, who are wife, daughter and parents of Ganganna, who died in the accident, are petitioners.

3. For the sake of convenience, the parties herein

are hereinafter referred to as arrayed in the O.P. before the Tribunal and Ganganna, who died in the accident, as deceased.

4. The facts, in brief, are that Ganganna, who was a graduate in B.A., was a vegetable vendor and he was growing tomatoes in his land of Acs.2-00 and selling them in the market at Dharmavaram.

On 19-11-2001, he engaged Tata Turbo Van and carried tomatoes grown in his land to sell them in the market at Dharmavaram from Kurlapalli, and when the van reached near Kattakindapalli within the limits of Pothukunta Police Station, since its driver drove it in a rash and negligent manner at high speed, Ganganna fell down from the van and sustained injuries. Immediately he was shifted to Government Head Quarters Hospital, Anantapur, where he succumbed to injuries. Hence, the petitioners laid claim against respondent Nos.1 and 2.

5. Respondent No.1, owner of the Tata Turbo Van that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the Van, filed counter opposing the claim and taken a specific plea that the deceased was travelling in the van, which was a goods vehicle, as an unauthorised passenger, as such, it is not liable to pay any compensation.

7. The Tribunal framed the following seven (7) issues in order to determine compensation as well as negligence in taking place of the accident.

“1) Whether the accident occurred on 19-11-2001 due to rash and negligent driving of the Van bearing No.TATA 407 Turbo 2001 by its driver, the deceased fell down and caused the death of the deceased ?

2) Whether the driver of the crime vehicle is having driving licence by the date of accident ?

3) Whether the crime vehicle was having valid permit on the date of accident ?

4) Whether the vehicle was Insured by the date of accident ?

5) Whether the petitioners proved the age, income and occupation of the deceased ?

6) Whether the petitioners are entitled to compensation? If so, to what amount and from which respondent ?

7) To what relief ?”

8. During enquiry, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A-1 to A-3 were marked, whereas on behalf of the insurer, RW.1 was examined and Exs.B-1 to B-9 were marked.

9. The Tribunal, on issue No.1, on appreciation of

evidence on record, held that due to rash and negligent driving of the Tata Turbo Van only, the accident had occurred. On issue Nos.2 to 4, negated the stand taken by the insurer and held them against it. On issue Nos.5 and 6, dealing with the documentary evidence, more particularly, Ex.A-1, certified copy of the complaint lodged by PW.1, which reveals that the deceased was travelling along with the tomato baskets, and even based on the evidence of RW.1, who admitted that the deceased was travelling in the Tata Van along with tomato baskets, negated the stand of respondent No.2 that the deceased was travelling as an unauthorised passenger in a goods vehicle.

The Tribunal taking the income of the deceased as Rs.50/- per day, which works out to Rs.1,500/- per month, and after deducting $\frac{1}{3}^{\text{rd}}$ i.e., Rs.500/- ($\text{Rs.1,500/-} \times \frac{1}{3}$) therefrom towards his personal expenses, arriving at Rs.12,000/- ($\text{Rs.1,000/-} \times 12 \text{ months}$) per annum towards his contribution to his family, taken the age of the deceased as 28 years as per Ex.A-2 post-mortem report and applying multiplier '17', arrived at Rs.2,04,000/- towards total compensation, but, since claim of the petitioners was only for Rs.2,02,000/-, restricted it to the claimed amount and awarded the same to the petitioners towards compensation by apportioning it amongst the petitioners.

10. It is the aforesaid order, which is challenged in the instant appeal, contending in the grounds of appeal that the Tribunal, somehow, did not properly appreciate the evidence on record, more particularly, evidence of RW.1, who deposed that the deceased was not owner of the goods carrying the entire load and on the other hand he was travelling in the Tata Van as a gratuitous passenger. It is also stated that the Tribunal ought to have held that owner of the Tata Van alone is liable to pay compensation, since no extra-premium covering risk of the passengers/deceased was paid.

11. Heard Sri E. Venugopal Reddy, learned standing counsel for the insurer (appellant), Sri S.D. Goud, learned counsel for the petitioners (respondents 1 to 4), and Sri K. Maheshwara Rao, learned counsel for the insured (respondent No.1).

12. Learned standing counsel for the insurer would submit that the Tribunal went wrong in holding that the deceased was travelling as owner of the goods on mere circumstance that he was taking tomato baskets therein, though, first information report under Ex.A-1 and other documentary evidence marked as Exs.B-2 and Exs.B-5 to B-8 would show that it was not only the deceased travelling in the Tata Turbo Van but also some others including one Basireddy Chinna Lakshmi Reddy, who, in fact, informed the father of the deceased as to taking

place of accident and death of the deceased, on which, father of the deceased lodged complaint, as such, it cannot be construed that the deceased was travelling in the Tata Van as owner of the goods having hired it for his purpose alone, and, therefore, the finding recorded by the Tribunal fastening liability on the insurer is improper and, sought to set aside the order and decree under challenge.

13. Learned counsel for the petitioners, *inter alia*, contends that the oral evidence through PW.2 and the admissions made by RW.1 coupled with documentary evidence under Ex.A-1 and Exs.B-2 to B-8 would prove that the deceased was travelling in TATA Van having hired it for transporting tomato baskets and, thus, supported the order under challenge.

14. In the light of the aforesaid contentions, the short question that arises for consideration is “whether the deceased can be construed as owner of the goods falling within the purview of Section 147 (1) (b)(i) of the Act?

15. A perusal of contents of Ex.A-1, certified copy of first information report, would show that not only the deceased, but also one Basirepddy Chinna Lakshmi Reddy, who informed about the accident to the father of the deceased, was also travelling in the Tata Van along with his tomato baskets. This apart, even a suggestion in

this regard was put to RW.1, who was working as Assistant Divisional Manager of insurer, by the learned counsel for the petitioners, for which, his answer was that as per Exs.B-2 to B-8, the deceased was travelling in the Tata Van along with another with tomato baskets.

He admits that the contents of Ex.B-2 would show that the Tata Van was engaged by the deceased and another to transport their luggage. Even the statement of Basireddy Chinna Lakshmi Reddy recorded under Section 161 of the Code of Criminal Procedure marked as Ex.B-2 would show that he himself and the deceased engaged the Tata Van belonging to one Lokanath Reddy (respondent No.1) to transport their tomato baskets to Dharmavaram.

16. Turning to the question whether the deceased alone was owner of the goods having hired the Tata Van or whether others also together engaged the same, the evidence of PW.1 in her cross-examination would show that she gives a positive admission that there were eight (8) others travelling in the Tata Van along with the deceased. Further, certified copy of Ex.A-1 F.I.R. also clearly shows that one Lakshma Reddy had also joined the deceased to carry his tomatoes. Thus, it is clear that it is not only the deceased, who said to have hired the Tata Van, but, there were others, who were also travelling in it including one Lakshma Reddy, who was also carrying his tomato baskets.

17. In that view of the matter, it is difficult to bring the deceased within the expression occurring in Sub-Section (2) of Section 147 of the Act. Hence, it has to be construed that there has been violation of terms and conditions of the insurance policy, in which respect, the Tribunal appears to have deviated in appreciating the plea taken by the insurer and recorded a finding, which requires to be withheld.

18. Therefore, the Civil Miscellaneous Appeal is allowed and the order and decree under challenge are set aside in respect of the insurer (appellant - respondent No.2) is concerned to the extent of exonerating its liability to pay compensation to the petitioners and confirming the same in all other respects. There shall be no order as to costs.

19. This Court by the order, dated 15.11.2005, directed the insurer to deposit half of the amount awarded by the Tribunal towards compensation including interest and costs within a period of six (6) weeks from that day and also permitted the petitioners to withdraw the same in the same proportion as ordered by the Tribunal without furnishing any security.

20. In that view of the matter, the insurer is directed to recover the amount, if any, deposited by it from the

insured, owner of the van involved in the accident, as the petitioners must have withdrawn the amount, if any, deposited by the insurer and that the petitioners are at liberty to recover the balance amount, if any, from the insured.

There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 29, 2016.

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