THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1369 OF 2005

JUDGMENT:

The instant appeal is preferred by respondent No.2 – Oriental Insurance Company Limited in O.P.No.254 of 2002 on the file of Chairman, Motor Accidents Claims Tribunal – cum – VI Additional District Judge (Fast Track Court), Anantapur at Gooty, questioning the order and decree, dated 19.03.2005, passed in the said O.P., on the ground that though specific plea was taken that the deceased was unauthorisedly travelling in a goods vehicle, still, the Tribunal overlooking the same, fastened liability on it while granting Rs.2,00,000/- as compensation for the death of one Mahaboob Basha.

2. The appellant –Insurance Company is respondent No.2, whereas respondent Nos.1 to 4, who are the mother, wife and children of the deceased Mahaboob Basha, are the petitioners and respondent No.5, who is the owner of the offending vehicle, 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 would show that on 28.03.2001, one Mahaboob Basha, a cloth vendor, boarded a tractor and trailor bearing registration Nos.AP-21-U-7798 and AP-21-U-7800 along with cloth bundles to proceed to Tadipatri and since the driver of the tractor drove it in a rash and negligent manner, it turned upside down near Thallamittapalli Village bus stop, due to which, he fell down and cloth bundles have fallen on him, resulting in his death instantly. The petitioners, claiming that the deceased was earning Rs.3,000/- per month, sought a sum of Rs.2,00,000/- as compensation under Sections 140 and 166 the Motor Vehicles Act, 1988.

5. Before the Tribunal, both the respondents filed separate counters resisting the claim. Respondent No.1, on the ground that the tractor was insured with respondent No.2 and it is liable to pay the compensation amount, sought to dismiss the claim petition against him, whereas respondent No.2 has taken specific ground that the deceased was travelling as an unauthorised passenger in a goods vehicle, besides raising other grounds and sought to dismiss the claim petition against it.

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

> "1. whether the accident occurred on

28-3-2001 due to rash and negligent driving of the tractor – cum – trailor bearing No.AP-21-U-7798 and AP-21-U-7800 by its driver and caused death of the deceased?

2. whether the petitioners are entitled for compensation and if so to what amount and from which respondent.

3. To what relief?"

7. During enquiry, petitioner Nos.1 and 2 examined themselves as PWs.2 and 1, respectively, and marked Exs.A1 to A4 to substantiate the claim laid. On behalf of respondent No.2, RW.1 was examined and marked Exs.B1 and B2.

8. The Tribunal somehow, went wrong in recording a finding on issue No.1 that since the tractor was insured with respondent No.2, respondent No.2 cannot be exonerated from its liability and thus, favoured the petitioners. On issue No.2, having arrived at Rs.2,00,000/- as compensation, apportioned the same amongst the petitioners by granting interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal specifically contending violation of policy conditions and other grounds, which ofcourse, are unnecessary to refer to.

10. Heard Sri Narsi Reddy Teegala, learned counsel for the appellant, Sri Maheswara Rao Kunchem, learned

counsel for respondent Nos.1 to 4, and Sri M.B. Thimma Reddy, learned counsel for respondent No.5.

11. As could be seen from the fact situation occurring in the instant case, the deceased was travelling in a tractor, which was a goods vehicle, and thus, he was an unauthorised passenger. The Tribunal went wrong in overlooking the same and has not dealt with the said plea taken by the Insurance Company, despite RW.1 being examined to prove that plea by marking Insurance Policy as Ex.B1, which shows that the terms and conditions of the policy have been violated by the owner of the tractor and the violation is fundamental in nature, which, certainly, favours respondent No.2 in exonerating its liability in payment of compensation. Therefore, that finding recorded by the Tribunal is hereby set aside and the instant appeal is allowed exonerating the Insurance Company from its liability, while confirming the order and decree under challenge in all other respects so far as respondent No.1 – owner of the tractor is concerned.

12. Further, a perusal of the proceeding sheet would show that at the time of admission, the Insurance Company was directed to deposit 50% of the compensation amount awarded by the Tribunal including costs and interest. The same appears to have been complied with, but, however, there is no order for

withdrawal of the same. In case, the amount deposited by the Insurance Company is withdrawn by the petitioners, the Insurance Company is at liberty to recover the same from respondent No.1 - owner of the tractor and if the amount still remains to the credit of the O.P., it is at liberty to seek return of the same from the Tribunal. The petitioners are at liberty to recover the compensation amount granted by the Tribunal from respondent No.1. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

April 19, 2016.
MD