HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4855 OF 2004

JUDGMENT:

Dissatisfied with the award of Rs.58,000/- as compensation as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the order and decree, dated 29-09-2004, in O.P. No.296 of 1999, granted by the learned Chairman, Motor Accident Claims Tribunal –cum-Principal District Judge, Khammam (for short 'the Tribunal'), the claimants preferred the instant appeal seeking enhancement.

2. The appellants herein, who are wife and sons of deceased – Kowjula Appi Reddy, are the petitioners in O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer of tractor-cum-trailer bearing registration No.AP 20T 6548 and 6549, respectively, are Respondent Nos.1 to 3, respectively.

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, in brief, are that on 21-10-1997 one Kowjula Appi Reddy was engaged by the owner of chillies

in order to transport the agricultural goods to Khammam market in a tractor-cum-trailer bearing registration No.APAP 20T 6548 and 6549 and at about 7.30 a.m., when the tractor reached near causeway between Ayyagaripali and Kamalapuram, since its driver, who was respondent No.1, drove it in a rash and negligent manner, the trailer got detached from the tractor and since the said Appi Reddy was sitting on the load of chillies, he fell down on the road and sustained injuries, and while he was being shifted to Government Hospital, Khammam, he succumbed to injuries. The petitioners claiming that the deceased was aged 58 years, earning Rs.3000/- per month, sought to grant the aforesaid amount as compensation.

5. Respondent Nos.1 and 2 got filed Vakalat entering their appearance, have not chosen to file counters and, thus, did not participate in the inquiry.

6. Respondent No.3 – Insurance Company opposed the claim requiring the petitioners to prove that the deceased was 58 years old, earning Rs.100/- per day as agricultural coolie and other avements mentioned in the petition.

i) Additional counter was filed by respondent No.3, subsequently raising the plea that the tractor-cum-trailer was required to be used for agricultural purpose only and not for transportation of any goods and the policy issued contains condition No.6 that the vehicle shall be used for the purpose of agriculture only, but at the time of alleged accident, the vehicle was used for carrying chilli bags and, therefore, it accounts for violation of terms and conditions of the policy. It was also pleaded that respondent No.1 was not holding valid transport license and was not eligible to drive the vehicle at the relevant time and engaging tractor for transporting chilli bags and allowing respondent No.1 to drive the transport vehicle who was not eligible to drive, was in violation of the terms and conditions of the policy and, therefore, sought to dismiss the claim petition against it.

7. Based on the pleadings, the Tribunal framed the following three issues:

> " 1. Whether the accident took place due to rash and negligent driving of the driver of tractor/trailer bearing No.AP.20-T-6548/6549?
>
> 2. Whether the petitioners are entitled for compensation? If so to what amount and from which of the respondents?
>
> 3. To what relief? "

8. During inquiry before the Tribunal, petitioner No.1 examined herself as PW.1 and exhibited Exs.A-1 to A-3.

On behalf of respondent No.3, Mr. Ch. Kantha Rao, one of the officials of its local branch, was examined as RW.1 and marked Ex.B-1, copy of insurance policy.

9. The Tribunal basing on documentary evidence, Ex.A-1, certified copy of first information report and Ex.A-2, certified copy of charge sheet, which was registered as C.C. No.584 of 1998 on the file of the II Additional Judicial Magistrate of First Class, Khammam, held that the accident had occurred solely due to rash and negligent driving of respondent No.1 and, accordingly, held issue No.1 in favour of the petitioners.

10. On issue No.2, though, petitioner No.1 claims that her husband was earning Rs.3,000/- per month by doing agricultural works and contributing the same to the family, but the Tribunal has fixed the income at Rs.1200/- per month, deducted 1/3rd and remainder Rs.800/- per month or Rs.9,600/- per annum was taken as contribution and taking the age of the deceased as 60 years basing on the contents of Ex.A-3 post-mortem examination report, applied multiplier '5' and arrived at Rs.48,000/- towards loss of dependency. Besides the same, a sum of Rs.5,000/- towards loss of consortium and another sum of Rs.5,000/- towards loss of love and affection, making a total of Rs.58,000/- as compensation and apportioned it among the petitioners.

11. Concerning liability of respondent No.3 by way of indemnifying respondent No.2, having deliberated on the said issue elaborately taking into consideration, Ex.B-1 contents recorded
a definite finding that there was violation of policy conditions under Ex.B-1 and thereby held that respondent No.3 is not liable to pay the compensation. Thus, the petition was partly allowed fixing liability on respondent Nos.1 and 2, who are driver and owner, respectively, while dismissing the claim petition against respondent No.3.

12. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal, somehow, overlooked the fact that no rebuttal evidence was let in by respondent No.3 to substantiate its stand and contending that the Tribunal has taken very meager amount towards income of the deceased, despite the fact that the deceased was earning more than Rs.3,000/- per month and contributing the same to the family maintenance, sought to allow the appeal fixing liability on respondent No.3 also by enhancing the compensation.

13. Heard Sri Kowturu Vinaya Kumar, learned counsel for the appellants – petitioners, and Sri Katta

Laxmi Prasad, learned Standing Counsel for respondent No.3 – Insurance Company. The appeal against respondent Nos.1 and 2 was dismissed by this Court, by order, dated 04-02-2011. The same would not make any difference in deciding the controversy herein.

14. Learned counsel for the appellants placed reliance on the decision of the Hon'ble Supreme Court in **Fahim Ahmad and others v. United India Insurance Company Limited and others**[1] contending that the Hon'ble Supreme Court has commented that the High Court was not justified in transferring burden of paying compensation from the Insurance Company. It is his submission that when there is no issue as was framed on the relevant aspect, the decision of the Hon'ble Supreme Court squarely applies to the facts in the instant case. However, this Court is not in agreement with the submission of the learned counsel for the appellants. Respondent No.3-Insurance Company has examined the Officer of the local branch as R.W.1 and marked Ex.B.1-copy of insurance policy and has asserted to the pleas raised in the counter resisting the liability sought to be fastened on it, precisely what amounted to the violation of terms and conditions of the insurance policy. In that view of the matter, the finding recorded by the Tribunal that there was violation of conditions of the insurance policy,

as can be viewed from Ex.B.1, cannot be withheld, more particularly, when the issue was already framed on that aspect. In that view of the matter, the instant appeal is without any merit so far as the request to fasten liability on respondent No.3-Insurance Company is concerned and, therefore, the order and decree passed by the Tribunal is hereby confirmed.

15. Accordingly, the instant appeal is dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

April 04, 2016.
Mgr/Siva

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[1] (2014) 14 SCC 148