

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1583 OF 2009

JUDGMENT:

Respondent No.2 - M/s. United India Insurance Company Limited, Kamareddy, in O.P. No.1983 of 2003, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, Nizamabad (for short 'the Tribunal'), assailing the order and decree, dated 27-11-2006, passed by the Tribunal, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. By the aforesaid order, the Tribunal awarded a compensation of Rs.4,00,000/- with interest at 7.5% per annum, which was the amount sought for by the petitioners by laying a claim petition under Section 166 of the Act for the death of one L. Lakshmi, wife of petitioner No.1 and mother of petitioner Nos.2 to 5.

3. In the present appeal, liability is questioned by the Insurance Company on the ground that the deceased - L. Lakshmi was travelling by sitting by the side of the driver of the tractor, and further violation being that the policy was issued for the use of tractor for agricultural purpose, but at the relevant time, the tractor was being used for the purpose other than agricultural purpose.

4. Respondent No.6 and the appellant herein, who are owner and insurer of tractor and trailer bearing registration Nos.AP J 1528

and AP J 4144, respectively, are respondent Nos.1 and 2, respectively, while respondent Nos.1 to 5, who are husband and children of deceased - L. Lakshmi, are the petitioners in the OP before the Tribunal.

5. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the OP.

6. The facts would show that on 13-08-2001 at about 11.30 p.m., the said L. Lakshmi was travelling on a tractor and trailer bearing registration Nos.AP J 1528 and 4144 from Muthyampet to Kamareddy as labourer, and when it reached Maisamma Temple, Kyasampalli village limits, since its driver drove it in a rash and negligent manner, she fell down from the tractor and the rear-wheel of the trailer ran over her head. She was immediately shifted to Government Hospital, Kamareddy, but she was declared dead due to the head injury.

i) The petitioners claiming that the deceased was 30 years old, earning Rs.4,000/- per month as an agricultural labour, contributing her earnings to the family and on account of her death, petitioner No.1 lost life partner and other petitioners lost affection of their mother, sought a compensation of Rs.4,00,000/- from respondent Nos.1 and 2.

7. Both the respondents filed separate counters.

i) Respondent No.1, owner of the tractor and trailer, while denying the allegation of negligence attributed to the driver of the tractor, stated that the tractor and trailer was insured with respondent No.2, and respondent No.2 is liable to indemnify him, and finally, sought to dismiss the claim petition against him.

ii) Respondent No.2 - Insurer, in its counter, pleaded that the driver ought not to have allowed more than the seating capacity of the labourers in the tractor and, therefore, the petition is not maintainable. Respondent No.2 also pleaded that the deceased must have travelled as an unauthorized passenger at the time of accident and, thus, respondent No.1 violated the terms and conditions of the policy, and thereby sought to dismiss the claim petition against it.

8. The Tribunal framed the following three issues basing on the said pleadings.

- “ 1) Whether the accident has taken place due to rash and negligent driving of the tractor bearing No.APJ-1528 and trailer No.APJ-4144 by its driver?
- 2) Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
- 3) To what relief?”

9. In order to substantiate their claim, petitioner No.1 examined as PW.1, besides examining one Mr. B. Chandraiah, an eye-witness to the occurrence, as PW.2, and marked Exs.A-1 to A-6. To prove the violation of the policy conditions, respondent No.2 examined one

K. Radha Krishna as RW.1, Senior Assistant in its branch office, and marked copy of insurance policy as Ex.B-1.

10. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner, holding that the policy issued by respondent No.2 marked as Ex.B-1 was in force on the date of accident, besides holding that the accident took place on account of rash and negligent driving of the driver of the tractor.

i) While dealing with issue No.2, appreciated the evidence of RW.1 and observing that mere fact that RW.1 admitted that he was not an eye-witness to the accident, did not agree with the stand of the Insurer.

ii) The Tribunal then proceeded with the age and earnings of the deceased in order to determine the compensation to which the petitioners are entitled. The Tribunal has taken the age of the deceased as 30 years basing on entry in Ex.A-2, inquest report, recorded as 30 years, and the income of Rs.100/- per day or Rs.36,000/- per annum, deducted 1/3rd towards personal expenses of deceased, and the remainder, Rs.24,000/- per annum towards contribution to the family. The Tribunal, then taken the multiplier '18' provided in Schedule-II appended to Section 163-A of the Act and arrived at Rs.4,32,000/-, but restricted the claim to Rs.4,00,000/-, awarding interest at 7.5% per annum thereon from the date of petition

till realization relying on the decision of the Hon'ble Supreme Court in II (2005) ACC 476 (SC), mulcting liability on respondent Nos.1 and 2 jointly and severally.

11. Aggrieved over the aforesaid order fastening liability on Insurer, respondent No.2 preferred the instant appeal.

i) Two contraventions have been projected by the appellant which are also mentioned in the above at the inceptive stage. First, relates to use of tractor other than for agricultural purpose, in other words, the tractor and trailer being used for commercial purpose at the relevant time. Second, that the deceased was travelling as unauthorized passenger as per I.M.T. 17, the premium collected for six coolies is only for the purpose of loading and unloading, but not to allow the coolies to travel in the accident vehicle, which the Tribunal has not taken note of, and thereby deviated in appreciation of legal principles and, therefore, sought to set aside the order and decree so far as the Insurer is concerned.

12. Heard Smt. A.Malathi, learned standing counsel for the appellant - respondent No.2. Despite service of notice on respondent Nos.1 to 5 - petitioners, none appears for them, while there is no representation for respondent No.6 - owner of the vehicle.

13. Perused the order and the evidence on record, both, oral and documentary, let in by both parties.

14. PW.2, no doubt, states that he along with the deceased L. Lakshmi went to load the sand in the accident vehicle on the work of respondent No.1 for the purpose of loading and unloading the sand to construct a cattle shed, and the accident took place resulting in the death of the deceased. In the cross-examination, when he was confronted with certain questions, he answers that himself, the deceased and two others were in the trailer at the time of accident and the deceased was sitting on the tractor by the side of the driver, whereas they were sitting in the trailer. For other questions, he states that he did not know the number of the said tractor as he was an illiterate and he did not lodge any complaint with the police and he stated to the police that he was an eye-witness and he did not state to the police as stated in his chief examination.

i) RW.1, though, admits in his cross-examination that the policy covers the risk of six coolies, denies the suggestion that the tractor and trailer were used for other than the agricultural purpose. When perused the counter filed by respondent No.1, he denies that the deceased working as a coolie, and on the other hand, sets up that she was a house-hold lady and as such, the petitioners have no right to claim compensation as dependants. When respondent No.1 does not at all whisper that the deceased was a loading and unloading coolie on his tractor and he engaged her on that day, certainly, the stand of the petitioners that she was employed by respondent No.1 as coolie, and

that her risk is covered by the policy itself creates some doubt. This apart, he did not mention in his counter whether the sand was being transported, if so, the purpose for which the sand was transported. Only, for the first time, it comes up in the evidence that the sand was being transported for the purpose of constructing a cattle shed. Only, it appears that purposely that was being stated by PW.2 with a view to see that no violation of terms and conditions of the policy would arise. Even, either in Ex.A-1, first information report, or in Ex.A-2, inquest report, the sand was being transported for the purpose of constructing a cattle shed by respondent No.1, is not forthcoming. Thus, not only there was violation of terms and conditions of policy as regards the use of the tractor and trailer, but also other violation that the deceased was not supposed to travel in the said tractor and trailer, more particularly, sitting by the side of the driver, contravening clause I.M.T- 17. The Tribunal, somehow, overlooked these two aspects. Therefore, the liability fastened on the appellant - respondent No.2 - Insurer has to be upset.

15. Accordingly, the appeal is allowed, and the order and decree, dated 27-11-2006, passed by the Tribunal in O.P. No.1983 of 2003 are hereby set aside in so far as appellant - Respondent No.2 - Insurer is concerned. So far as Respondent No.1, owner of the tractor and trailer, is concerned, the liability fastened on him by the Tribunal to pay the compensation of Rs.4,00,000/- with interest at 7.5% per

annum thereon is maintained. If the petitioners have withdrawn any amount, the Insurer is at liberty to recover the same from owner of the vehicle. In case, the amount is still lying to the credit of the aforesaid OP deposited by the Insurer, the insurer is at liberty to seek return of the amount. The petitioners are at liberty to recover the compensation amount from respondent No.1, owner of the vehicle. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 06, 2016.
Mgr

