

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2135 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the New India Assurance Company Limited, aggrieved over the order and decree dated 08.02.2008, in M.V.O.P. No.210 of 2006 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge (Fast Track Court), Kadapa at Rajampet (for short 'Tribunal'), in fastening liability on it to pay the compensation of Rs.1,72,000/- as against the claim of Rs.2,00,000/- laid by respondent Nos.1 and 2 herein - petitioners under Section 166 of the Motor Vehicles Act 1988 (for short 'the Act'), on the main ground that on account of his own negligence, Gadikota Prathap Reddy (hereinafter referred to as 'deceased') suffered death in the road accident while sitting by the side of the driver of the auto-rickshaw bearing No.AP-04-U-9437 at the time of accident though, he was not authorized to sit.

2. Heard Sri Naresh Byrapaneni, learned standing counsel for the appellant, and Sri G. Vijaya Raghava Reddy, learned counsel for the petitioners - claimants.

3. Despite service of notice, none appears for respondent No.3, owner - cum - driver of the auto-rickshaw that involved in the accident,

4. The fact-situation leading to the death of the deceased while travelling in the auto-rickshaw is not in dispute. But, the dispute is, according to the insurer, the deceased was, in fact, sitting by the side of the driver of the auto-rickshaw at the relevant time. To support the same, learned sanding counsel for the insurer contends that the First Information Report would clearly indicate that the deceased was sitting at the center seat of the auto-rickshaw and the center seat is intended for accommodating the driver of the auto-rickshaw, and, therefore, on account of the said violation, it can be viewed that the deceased himself was negligent, and, therefore, no liability can be fastened on the insurer.

5. His submission is also based on the statement of RW.1, an official of the concerned branch of the insurer, and, of course, on Ex.B-2, the statement of PW.2 recorded under Section 161 of the Code of Criminal Procedure (Cr.P.C.). The said deposition of PW.2 was exhibited through RW.1

6. On the other hand, learned counsel for the petitioners would submit that there is no clear evidence to show that the deceased was really sitting by the side of the driver in the auto-rickshaw at the relevant time occasioning for his own negligence on account of sitting there, and that the center seat of the auto-rickshaw does not indicate that it was driver's seat and even the evidence of RW.1 would not improve the case of the insurer and, thus, supports the order under challenge.

7. Perused the order and decree under challenge and the evidence on record.

8. Wherever there is reference to the place where the deceased was sitting just before the accident was referred to as 'by the side of the center seat'. But, by that itself it cannot be definitely viewed that the deceased was sitting by the side of the driver of the auto-rickshaw, unless such an expression really occurs in Ex.A-1, copy of the first information report, or Ex.A-4, copy of the charge sheet, or in any of the documents that emanated during the course of investigation. Even the statement under Section 161 Cr.P.C. marked as Ex.B-2 indicates the very same position as indicated in the first information report and, thus, does not improve the stand of the insurer that the deceased was sitting by the side of the driver at the relevant time.

9. Therefore, the conclusion is, that the Tribunal did not commit wrong in holding that the insurer is liable to pay compensation.

10. So far as determination of compensation is concerned, there is no challenge as could be gathered from the grounds of appeal. Even otherwise, the deceased was fifteen (15) years old at the relevant time. The Tribunal has rightly computed the compensation in arriving the same at Rs.1,72,000/- and also granting interest at 7.5% per annum, as the same is in tune with the interest awarded by the

Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others¹**.

11. Thus, there is no merit in the appeal and is accordingly dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

December 23, 2016.
PV

1. 2013ACJ1403 = 2013(4)ALT35

