

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2772 OF 2005

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JUDGMENT:

The instant appeal is preferred by the 2nd respondent - M/s. New India Assurance Company Limited in O.P. No.1255 of 2002, on the file of the Chairman, Motor Accident Claims Tribunal - cum -

IV Additional District Judge (II-Fast Track Court), Nalgonda,

(for short 'the Tribunal') aggrieved by the order and decree, dated

24-06-2005, passed by the Tribunal granting a sum of Rs.1,65,000/- as compensation with interest @ 8% per annum from the date of petition i.e. 30-10-2002 till the date of award and @ 6% per annum from the date of award till realization as against the claim of Rs.2,00,000/- laid by the petitioners, who are legal representatives of Mr. Bhagavanthu whose death occurred in a road accident, under Section 166 read with 140 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. Respondent No.6 and the appellant herein, who are owner and insurer of Tractor-cum-Trailer bearing registration Nos.AP 24A 4495 and 4496, respectively, are respondent Nos.1 and 2, respectively, in O.P. before the

Tribunal, while respondent Nos.1 to 5 are the petitioners.

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 08-05-2002, one Bhagavanthu engaged a tractor-cum-trailer bearing registration Nos.AP 24A 4495 and 4496 belonging to respondent No.1 for transporting bricks and was travelling along with the bricks, and when the tractor-cum-trailer reached the outskirts of Nagaram village since its driver drove it at high speed in a rash and negligent manner, he lost control over the same, as a result of which, he fell down from the tractor-cum-trailer and its rear wheel ran over him, due to which, he died instantly.

A case in Crime No.32 of 2002 was also registered by the Station House Officer, Valigonda Police Station punishable under Section - 304-A IPC against the driver of the tractor-cum-trailer. The petitioners, who are wife and children of the deceased, claiming that the deceased was aged 38 years, earning Rs.6,000/- per month as a manufacturer of bricks, sought the aforesaid amount as compensation against the owner and insurer of the tractor-cum-trailer, the respondent Nos.1 and 2, respectively, in the OP.

5. Respondent No.1, owner of the tractor-cum-trailer, remained *ex parte* before the Tribunal.

6. Respondent No.2, its insurer, opposed the claim raising a specific plea that the deceased was travelling on the tractor-cum-trailer unauthorizedly.

7. Based on the pleadings, the Tribunal framed three issues in the direction of fixing responsibility for the accident.

8. During inquiry before the Tribunal, PWs.1 and 2 were examined and Exs.A-1 to A-5 were marked on behalf of the petitioners. On behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B-1.

9. The Tribunal, on appraisal of evidence, held issue No.1 in favour of the petitioners; and on issue No.2, the Tribunal taking the age of the deceased as 40 years and notional income at Rs.15,000/- per annum, deducting 1/3rd there-from towards personal expenses of the deceased, arrived the contribution at Rs.10,000/- per annum to the family, and applying multiplier '14' determined the loss of dependency at Rs.1,40,000/-, besides granting Rs.10,000/- towards loss of consortium

and a sum of Rs.15,000/- towards loss of expectation of life and, thus, awarded a sum of Rs.1,65,000/- as compensation with interest as mentioned in the above against respondents jointly and severally.

10. It is the aforesaid order which is under challenge in the instant appeal by respondent No.2 - Insurance Company contending in the grounds that the deceased was travelling as unauthorized passenger in goods vehicle and, in fact, the case of the Insurance Company has been that the deceased forcibly boarded the tractor-cum-trailer, despite two persons were engaged for loading bricks at Gollapalli village and, therefore, sought to set aside the order and decree so far as fixing liability on it is concerned.

11. Heard Sri T. Ramulu, learned standing counsel for the appellant - Insurance Company, and Sri T. Srikanth Reddy, learned counsel for respondent Nos.1 to 5 - petitioners. Despite service of notice on respondent No.6 - insured, none appears, however, the same would not make any difference in deciding the controversy herein, as he has already suffered a decree passed by the Tribunal having been set *ex parte*.

12. Perused the order and the material on record, both, oral and documentary, let in by the parties.

13. The learned standing counsel appearing for Insurer would submit that the deceased was not authorized to travel on the tractor-cum-trailer even if it is construed that he engaged it on hire from respondent No.1 and, therefore, that accounts for violation of terms and conditions of the insurance policy and, therefore, sought to exonerate the liability fixed on insurer.

14. The learned counsel for respondent Nos.1 to 5 - petitioners though, submits that the award passed by the Tribunal is sound and does not warrant interference, still, *ex-facie*, the very fact that the deceased was travelling in the tractor-cum-trailer sitting on the bricks and that he was not supposed to sit on it as it was a goods vehicle, certainly, Insurance Company cannot be made liable to pay compensation by way of indemnifying the owner of the vehicle, respondent No.1, as it accounts for violation of terms and conditions of Ex.B-1, insurance policy. In the said circumstances, nothing-else is required to probe further in arriving at that the Tribunal went wrong in fastening liability on insurer and, therefore, to the extent of fixing liability on respondent No.2 - Insurance Company by the Tribunal is liable to be set aside.

15. Accordingly, the appeal is allowed setting aside the order and decree, dated 24-06-2005, in O.P. No.1255 of 2002, passed by the Tribunal, to the extent of fixing

liability on respondent No.2 - Insurance Company to pay compensation to the petitioner, however, confirming the order in all other respects.

16. As seen from the proceeding sheet, this Court, by order, dated 19-10-2005, while granting interim stay in MACMAMP No.4695 of 2005, imposed a condition on the appellant - respondent No.2 to deposit half of the amount including interest and costs, and granted permission to the petitioners to withdraw the same in proportionate to their respective shares apportioned by the Tribunal. The appellant herein is at liberty to recover the amount deposited by it from the owner of the vehicle, respondent No.1, and so far as balance amount is concerned, since liability on the owner is not set aside, the petitioners are at liberty to recover the same from respondent No.1 - owner of the vehicle. There shall be no order as to costs.

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

A. SHANKAR NARAYANA J.

March 18, 2016.

Mgr