

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1371 OF 2005

JUDGMENT:

The National Insurance Company Limited, which is respondent No.3 in O.P. No.629 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Tanuku, West Godavari District (for short, 'the Tribunal'), aggrieved by the order dated 04.04.2005, whereby and whereunder, the Tribunal, while rejecting the plea of the appellant-Insurance Company that the deceased in this case was an unauthorized passenger travelling on the accident vehicle, which is a goods vehicle, mulcted liability on it (appellant) to pay a sum of Rs.1,58,900/- with interest at 9% per annum, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking to set aside the order to the extent of fastening liability on it (appellant).

2. The appellant herein is respondent No.3, while respondent Nos.1 and 2 herein, who are the wife and son of the deceased, are the petitioners, respondent Nos.3 and 4 herein, who are the driver and owner of the tractor bearing registration No.AP 37T 7862, respectively, are respondent Nos.1 and 2, respectively, and respondent No.5 herein, who was the mother of the deceased, is respondent No.4, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 10.04.2004 at about 3-00 p.m., one Kolli Peda Ramulu (deceased) was travelling on the tractor bearing registration No.AP 37T 7862 as loading and unloading worker from Chivatam village to Kavitam village and since its driver drove it in a rash and negligent manner, the deceased accidentally slipped and fallen down and received injuries and he was shifted to Government Hospital, Tanuku, where he was given first-aid and then he was shifted to Government General Hospital, Kakinada, for better treatment, where he succumbed to injuries while undergoing treatment. The petitioners, stating that the deceased was 42 years old and they were all dependents on him, sought a sum of Rs.3,00,000/- under Section 166 of the Act.

5. Respondent Nos.1 and 2, who are driver and owner of the accident vehicle remained *ex parte*.

Respondent No.3-insurer alone contested the claim. Respondent No.4 is the mother of the deceased. However, respondent No.3 while opposing the claim has raised a specific plea that the deceased was not authorized to travel on the goods vehicle and that accounted for violation of terms and conditions of the

policy, and, therefore, sought to dismiss the claim petition against it.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the deceased Kolli Pedaramudu died due to rash and negligent driving of the tractor bearing No.AP 37 T 7862 driven by its driver 1st respondent?

2. Whether the petitioners are entitled to claim any compensation? If so to what amount and from which of the respondents?

3. Whether the 4th respondent is a proper and necessary party to the case and if so whether she is entitled to any compensation?

4. To what relief ?"

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining an eyewitness as P.W.2 and marked Exs.A.1 to A.5 to substantiate their claim; whereas, on behalf of respondent No.3, R.Ws.1 and 2 were examined and Exs.B.1 and B.2 were marked.

8. On appraisal of evidence let in by both sides, the Tribunal held issue No.1 in favour of the petitioners; and on issue Nos.2 and 3, taking the income of the

deceased as Rs.1,500/- per month and Rs.18,000/- per annum, deducted 1/3rd therefrom towards personal expenses and taking the age of the deceased as 42 years, applied multiplier 12.20, arrived the loss of dependency at Rs.1,46,400/-. Besides the same, the Tribunal has also granted Rs.10,000/- towards loss of consortium and Rs.2,500/- towards funeral expenses, and, thus, granted a total sum of Rs.1,58,900/- as compensation with interest at 9% per annum fixing liability on respondent Nos.1 to 3 jointly and severally.

9. 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 the deceased was not authorized to travel on the goods vehicle, more particularly, while sitting on the mudguard and that there has been fundamental violation of the terms and conditions of the policy and even the evidence of R.Ws.1 and 2 coupled with the contents of Exs.B.1 and B.2 would clearly substantiate the said plea, but the Tribunal has completely sidelined the said aspect, and, therefore, sought to set aside the order and decree.

10. Heard Sri N. Mohan Krishna, learned Standing Counsel for respondent No.3 (appellant-Insurance Company), and Sri A.K. Kishore Reddy, learned counsel for the petitioners (respondent Nos.1 and 2 herein). Despite service of

notice on respondent Nos.3 to 5, none appears for them.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties. At the outset, it is to observe that the Tribunal totally went wrong in its approach in appreciating fact-situation and the evidence on record. The evidence of R.Ws.1 and 2 coupled with the contents of Exs.B.1 and B.2, would clearly establish that the stand of the petitioners that the deceased was a worker on the tractor is of no avail, more particularly, when the deceased was sitting on the mudguard as per the recitals of Exs.A.1 to A.5, and, therefore, the order of the Tribunal, to the extent of fastening liability on respondent No.3-Insurance Company, is liable to be set aside.

12. As seen from the proceeding sheet, this Court by orders dated 08.07.2005 directed respondent No.3-Insurance Company (appellant) to deposit half of the compensation awarded by the Tribunal including interest and costs. Learned Standing Counsel for respondent No.3-Insurance Company represents that it has complied with the same and it is also his submission that the said amount was also withdrawn by the petitioners. In such an event, respondent No.3-Insurance Company is hereby directed to recover half of the compensation, which was deposited into the Court, from the owner of the tractor, who is respondent No.2 (respondent No.4 herein). The

petitioners are entitled to recover the remaining half of the compensation from the owner of the vehicle, as the liability cast on him by the Tribunal remains undisturbed.

13. Accordingly, the instant appeal is allowed setting aside the order passed by the Tribunal to the extent of fastening liability on respondent No.3, while maintaining the order in all other respects so far as the driver and owner of the tractor are concerned, who are respondent Nos.1 and 2 (respondent Nos.3 and 4 herein). There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

26th February, 2016

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