

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1234 OF 2005

JUDGMENT:

Respondent No.2 - M/s. New India Assurance Company Limited, in O.P. No.924 of 2000, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Kadapa at Proddatur (for short 'the Tribunal'), is the present appellant.

2. Aggrieved by the order and decree, dated 12-08-2004, passed by the Tribunal, whereby and where-under, a sum of Rs.2,33,000/- (Rupees two lakhs and thirty three thousand) with interest at 9% per annum was granted as compensation as against the claim of Rs.3,00,000/- (Rupees three lakhs) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of one Bojja Ravikumar, respondent No.2 preferred the instant appeal mainly on the ground that there has been fundamental violation of the terms and conditions of the policy as the deceased was not supposed to sit by the side of the driver of the tractor when the accident had taken place which, the Tribunal totally overlooked despite there-being a specific plea.

3. Respondent No.6 and the appellant herein, who

are owner and insurer of tractor - cum - trailer bearing registration No.AP 04A 6858 and 6859, are respondent Nos.1 and 2, respectively, in O.P. before the Tribunal, while respondent Nos.1 to 5 are the petitioners.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in O.P. before the Tribunal.

5. The facts would show that on 25-09-1999, one Ramaiah, Ravi Kumar and Ramachandraiah loaded sticks into the trailer bearing registration No.AP 04A 6859 attached to the tractor bearing registration No.AP 04A 6858 and started from Jammalamadugu at about 9.40 p.m. One Sreenivasulu, was driving the said tractor while Ravi Kumar and Ramachandraiah sat on either side of the driver. When the tractor reached near Quarry at Peddasettipalli, an Escort tractor was found coming in opposite direction being driven at high speed in a rash and negligent manner, due to which, the driver of the tractor got confused and applied sudden brakes to stop the tractor, due to which impact, Ravi Kumar, who was sitting by the side of driver, thrown on the road and came under the right wheel of tractor which was dislodged from the engine. The said Ravi Kumar sustained grievous injuries and when he was taken to Government Hospital, Jammalamadugu in a lorry, he succumbed to injuries.

i) The petitioners being the legal representatives of the deceased, claiming that the deceased was working as Sweeper in Municipality at Proddatur, earning Rs.3,000/- per month, aged 25 years and maintaining the family, sought to grant Rs.3,00,000/-.

6. Respondent No.1, owner of the vehicle, filed counter stating that due to his own negligence, the deceased fell down from the tractor and died. It is also his case that since the tractor and trailer were insured with respondent No.2, as per the terms and conditions of the policy, respondent No.2 is obligated with the duty to indemnify him.

7. Respondent No.2 - Insurance Company raised various averments in its counter. However, a specific plea was taken that there was violation of terms and conditions of the policy as the deceased sat by the side of the driver of the tractor at the time when the accident had taken place and, therefore, it amounted to violating the terms and conditions of the policy. Thus, it sought to exonerate from the alleged liability and to cast it on respondent No.1.

8. Basing on the said pleadings, the Tribunal framed the following three issues.

- “ 1. Whether the deceased by name Bojja Ravikumar died in a
motor vehicle accident on 25.9.99 at 11 p.m., due

to rash
and negligent driving of the driver of tractor
No.AP04 A
6858 and 6859?

2. Whether the petitioners are entitled for
compensation
and if so to what amount and from whom?

3. To what relief?"

9. During inquiry before the Tribunal, petitioner No.1
examined herself as PW.1, besides examining I.
Ramachandraiah as PW.2 and marked Exs.A-1 to A-4.
No witnesses were examined on behalf of respondent
No.2 and no documents were filed.

10. The Tribunal held issue No.1 in favour of the
petitioners by recording a finding that due to rash and
negligent driving of the driver of the tractor, the accident
had occurred; when the driver applied sudden brakes, the
deceased sitting by the side of the driver, fell down and
the wheel of the tractor ran over him. On issue No.2, the
Tribunal taking the age of the deceased as '25' years,
monthly income at Rs.1500/- or Rs.18,000/- per annum,
applying the multiplier '17' as per the II Schedule
appended to Section 163-A of the Act, arrived at
Rs.3,06,000/- and having deducted 1/3rd there-from i.e.,
Rs.1,02,000/-, worked out Rs.2,04,000/- towards loss of
dependency. Besides the same, the Tribunal has granted

Rs.2,000/- towards transportation; Rs.2,000/- towards funeral expenses; Rs.15,000/- towards loss of consortium; and Rs.10,000/- towards loss of love and affection and also parental care, thus, making a total of Rs.2,33,000/- granted by the Tribunal with interest at 9% per annum thereon from the date of petition till realization against respondent Nos.1 and 2.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by respondent No.2 - Insurer, contending in the grounds that the Tribunal failed to see that the deceased was an unauthorized passenger and that it amounted to violation of terms and conditions of the policy and, therefore, sought to set aside the order and decree.

12. Heard Sri Kota Subba Rao, learned Standing Counsel for appellant - Respondent No.2/Insurer, and Sri K. Rathanga Pani Reddy, learned counsel for respondent Nos.1 to 5. In fact, the appeal was dismissed against respondent No.6, owner of the tractor and trailer, by the order, dated 03-01-2012. Respondent No.2, who is petitioner No.2 in OP, was declared as major, by orders, dated 04-04-2014, in M.A.C.M.A.M.P. No.1489 of 2014.

13. The submission of learned counsel for the appellant is that it is clear from the evidence on record

both, oral and documentary, that the deceased was sitting by the side of the driver of the tractor and, therefore, nothing more is required to arrive at a conclusion that the deceased was travelling un-authorizedly, which amounted to violation of terms and conditions of the policy.

14. The learned counsel for respondent Nos.1 to 5, in fact, supported the finding recorded by the Tribunal and the compensation awarded by it.

15. Perused the order and the material on record both, oral and documentary.

16. The contents of Ex.A-1 - certified copy of first information report; Ex.A-2 - certified copy of inquest report, besides the evidence of PW.2, would clinchingly establish that the deceased was sitting by the side of the driver of the tractor at the relevant time, and when the driver applied sudden brakes, the deceased was thrown out of the tractor and fell down on the road and wheel of the tractor ran over him resulting in serious injuries to him and later succumbed to injuries.

17. It is no doubt true, neither side did attempt to file copy of insurance policy, but, of course, it is not that material. When admitted fact-situation occurring in the instant case is kept in view, certainly, none of the persons were permitted to sit on the tractor that too on either side

of the driver. That itself is sufficient enough to arrive at a conclusion that the deceased was travelling as unauthorized passenger and, therefore, it accounts for violation of terms and conditions of the policy. Certainly, the Insurance Company cannot be mulcted with liability. The Tribunal, somehow, ignoring the same, proceeded with determining the compensation even without referring to the specific plea taken by the Insurance Company touching the factum of violation of terms and conditions of the policy.

18. Therefore, the appeal is allowed, and the order and decree, dated 12-08-2004, in O.P. No.924 of 2000, passed by the Tribunal are set aside against the appellant - respondent No.2 in O.P., however, maintaining the order and decree in all other respects, leaving open to the petitioners to recover the amount from the owner of the vehicle. No order as to costs.

19. As seen from the order passed by this Court on 22-06-2005, the appellant herein was directed to deposit half of the compensation amount awarded by the Tribunal including interest and costs within a period of six (06) weeks with a further direction that on such deposit, respondent Nos.1 to 5, who are petitioners, respectively, were permitted to withdraw the compensation in proportion to the share apportioned in their favour without

furnishing any security while directing the compensation which fell to the share of minors i.e., petitioner Nos.2 to 4 to deposit in a Nationalized Bank in an interest bearing deposit; besides permitting the mother of petitioner Nos.2 to 4 to withdraw the interest on the said deposited amount periodically. The appellant - Insurance Company is at liberty to recover the amount withdrawn by the petitioners - claimants from the owner of the vehicle. In case any amount is still in Court deposit, the appellant is at liberty to seek return of the same. So far as balance amount is concerned, the petitioners are given liberty to recover the same from the owner of the vehicle.

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

A. SHANKAR NARAYANA, J

July 04, 2016.

Mgr