THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No.1689 of 2004

JUDGMENT:

Aggrieved by the Award dated 04.11.2003 in O.P.No.1029 of 2000 passed by the Chairman, MACT-cum-I Additional District Judge, East Godavari District at Rajahmundry, R.3 in the O.P/United India Insurance Company has preferred the instant appeal.

2) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

3) The factual matrix of the case is thus:

a) The 1st claimant is the wife, 2nd claimant is the son and claimants 3 and 4 are parents of the deceased—Karri Eswar Reddy. On 26.02.2000, the deceased boarded the lorry bearing No.AP 5 X 1517 along with three bags of poultry feed and paid freight charges at Vadisaleru to go to Samalkot. When the said lorry reached Palm Tech factory on the A.D.B road in between Peddapuram and Samalkot, the driver of the lorry i.e, 1st respondent drove the vehicle in a rash and negligent manner and at high speed and lost control and thereby the lorry turned turtle. In the resultant accident, the deceased who was sitting in the cabin died on the spot. It is averred that the driver of the lorry was solely responsible for the accident. On these pleas, the claimants filed O.P.No.1029 of 2000 against respondents 1 to 3, who are the driver, owner and insurer of the lorry and claimed Rs.2,50,000/- as compensation.

b) Respondents 1 and 2 remained *ex parte*.

c) Respondent No.3/Insurance Company filed counter denying the material averments made in the petition and urged to put the claimants in strict proof of the same. It disowned its liability on the ground that the deceased travelled in the lorry as unauthorized passenger. Finally, it contended that compensation claimed was highly excessive and exorbitant and thus, prayed to dismiss the OP.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A3 were marked on behalf of claimants. RW1 was examined and Ex.B1—policy copy was marked on behalf of respondents.

e) The Tribunal on appreciation of evidence both oral and documentary, awarded compensation of Rs.2,50,000/- with costs and interest @ 9% p.a against respondents 1 to 3, as below:

Loss of dependency	Rs.2,44,800-00
Loss of consortium	Rs. 15,000-00
Loss of estate	Rs. 15,000-00
Funeral expenses	Rs. 2,000-00
Total	Rs.2,76,800-00

(Restricted to Rs.2,50,000/-)

It may be noted that though the Tribunal arrived at a figure of Rs.2,76,800/-, it restricted the compensation to Rs.2,50,000/- as claimed by the claimants.

Hence, the instant appeal by Insurance Company.

4) Heard arguments of Sri E.Venugopal Reddy, learned counsel for appellant/Insurance Company and Sri N.Siva Reddy, learned counsel for respondents 1 to 4/claimants. Notices sent to R.5 and R.6 returned unserved.

5) Sri E.Venugopal Reddy, learned counsel for appellant/Insurance Company would vehemently contend that Tribunal miserably erred in fastening liability on the Insurance Company on the finding that deceased travelled in the vehicle as representative of owner of the goods. He argued that deceased was only midway passenger but not owner or authorized representative of the owner of the goods and as such, his risk will not be covered under Ex.B1—policy. He placed reliance on the judgment of the Apex Court in ***New India Assurance Company Limited vs. Asha Rani and others***[1]. He thus prayed to allow the appeal and exonerate the Insurance Company.

6) Per contra, Sri N.Siva Reddy, learned counsel for R1 to R4/claimants contended that there was ample evidence in the form of PW2 to show that deceased travelled not as a midway passenger but as the authorized representative of the owner of the goods. Therefore, the Tribunal rightly fastened liability on the Insurance Company. He thus prayed to dismiss the appeal.

7) In view of above rival arguments, the point for determination in this appeal is:

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[1] 2003 ACJ 1 = (2003) 2 SCC 223

"Whether the Tribunal was right in fixing liability on the appellant/Insurance Company?"

8) **POINT**: The plea of the claimants is that deceased—Karri Eswar Reddy was working as clerk in the poultry farm of PW2 and on the date of accident he was carrying three bags of poultry feed in the lorry by paying freight charges and he thus travelled in the lorry in the capacity of authorized representative of his employer but not as unauthorized passenger.

a) In this regard, PW2 deposed that he was doing business in poultry (Broiler) and running sheds at Vadisaleru, Samalkot and Kakinada and deceased was working under him as clerk on a monthly salary of Rs.1,800/- He further deposed that on the date of accident he instructed the deceased to transport three bags of poultry feed from Vadisaleru to Samalkot poultry sheds and on his instructions the deceased boarded the lorry bearing No.AP 5 X 1517 at 8 AM along with three bags of poultry feed by paying freight charges in his presence and on the way he met with accident near Palmetech factory on ADB road between Peddapuram and Samalkot. In the cross-examination he stated that since 15 years he has been running poultry farm but he was not maintaining accounts. He further stated that he stopped the lorry passing on the road and boarded the deceased along with three bags of poultry feed with a direction to take the bags to Samalkot poultry. He denied the suggestion that he was speaking falsehood as the deceased belong to same village.

b) So, a close scrutiny of evidence of PW2 would show that deceased was working under him and on the date of accident, PW2 himself stopped the lorry and got boarded the deceased in the lorry along with poultry bags to take them to Samalkot poultry. I find no reason to disbelieve the evidence of PW2 merely because he happens to be the co-villager of the deceased. Nothing specific was extracted in the cross-examination to discard his evidence. Hence, the evidence of PW2 clinchingly establishes that deceased travelled in the lorry as authorized representative of PW2 but not as midway passenger. Merely because the goods were transported from midway, that cannot be a ground to hold that Ex.B1—policy does not cover the risk of passenger. The citation relied upon by the appellant/Insurance Company will not come to its aid. I find no illegality or irregularity in the finding of the Tribunal.

9) Accordingly, this appeal is dismissed by confirming the award passed by the Tribunal. No costs.

U. DURGA PRASAD RAO, J

Date: 16.12.2016
Murthy