

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1397 OF 2005

JUDGMENT:

Aggrieved by the order dated 22.03.2004 in O.P. No.742 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari District at Eluru (for short, 'the Tribunal'), whereby and whereunder, a sum of Rs.1,00,000/- was granted as compensation with interest at 12% per annum from the date of petition till realization against respondent No.2-owner of the accident vehicle for the death of Gummadi Prabhudas, who was husband of appellant No.1, father of appellant Nos.2 and 3, dismissing the claim petition against respondent No.3-Insurance Company, the instant appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking to fasten liability on respondent No.3-Insurance Company.

2. Appellant Nos.1 to 3 herein, who are claimants, are petitioner Nos.1 to 3, while respondent Nos.1 to 3 herein, who are the driver, owner and insurer of the lorry bearing registration No.AP 16T 12, are respondent Nos.1 to 3, respectively, 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 08.05.1998, the said Gummadi Prabhudas (deceased) was returning from Tadepalligudem to Eluru along with vegetable goods, having boarded a lorry bearing registration No.AP 16T 12 by paying Rs.50/- as fare for transportation of goods and when they reached Narrow Bridge, Denduluru, since respondent No.1-driver of the lorry drove it in a rash and negligent manner at high speed, it dashed against a tree standing by the side of the road, due to which, the instantaneous death of the deceased took place. The petitioners, being the legal representatives, laid claim for Rs.1,00,000/- against respondent Nos.1 to 3, who are driver, owner and insurer of the lorry, respectively.

5. Claim against respondent No.1-driver of the lorry was dismissed. Respondent No.2-owner of the lorry remained *ex parte*. Respondent No.3-Insurance Company opposed the claim taking specific plea that the deceased was travelling in the lorry as unauthorized passenger, which is fundamental violation, and no liability can be fastened on it.

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

"1. Whether the accident occurred due to rash and

negligent driving of the lorry bearing No.AP 16T 12
driven by the 1st respondent?

2. Whether the petitioners are entitled for
compensation, if so to what amount and against
which of the respondents?

3. To what relief?"

7. During enquiry, petitioner No.1 examined
herself as P.W.1 besides marking Exs.A.1 to A.3 to
substantiate their claim; whereas, on behalf of respondent
No.3-Insurance Company, Senior Assistant from its local
branch was examined as R.W.1 and marked a copy of
insurance policy as Ex.B.1.

8. On appraisal of evidence on record, the
Tribunal held issue No.1 in favour of the petitioners. On
issue No.2, the Tribunal recording a finding that the
deceased was travelling in the lorry, a goods vehicle, and
finding through the F.I.R. that there was nothing
mentioned in the F.I.R. that the deceased was travelling in
the lorry along with the vegetable goods, and recorded a
finding that the deceased was unauthorized passenger
travelling in a goods vehicle and, thereby, exonerated
respondent No.3-Insurance Company from its liability on
account of the violation of terms and conditions of the
policy committed by respondent No.2-owner of the lorry
and an amount of Rs.1,00,000/- was awarded towards
compensation to the petitioners with interest at 12% per
annum from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the deceased was travelling along with vegetables by paying Rs.50/- towards transportation of goods and the Tribunal went wrong in holding otherwise, hence, sought to fasten liability on respondent No.3-Insurance Company.

10. Heard Sri Naram Nageswara Rao, learned counsel for the appellants-petitioners, and Sri Ramachandra Reddy Gadi, learned Standing Counsel for respondent No.3-Insurance Company. It is endorsed in the cause title of the grounds that respondent Nos.1 and 2 are not necessary parties.

11. Perused the order and the evidence on record. The evidence clearly establishes that the deceased was travelling as an unauthorized passenger in the lorry. The fact that the F.I.R. does not contain that the deceased was carrying on vegetable business is sufficient enough to hold that the finding recorded by the Tribunal basing on the F.I.R. and other evidence on record is well reasoned and does not warrant any interference. Therefore, there is, absolutely, no merit in the instant appeal.

12. Accordingly, the instant appeal is dismissed confirming the impugned order. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

9th February, 2016
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