

HONOURABLE SMT JUSTICE ANIS

C.M.A.No 2838 OF 2005

DATED 7TH JANUARY, 2016

BETWEEN

The Branch Manager, United India Insurance
Company Limited, Sangareddy

...Appellant

And

Kusangal Balaiah and ors

...Respondents.

HONOURABLE SMT JUSTICE ANIS

C.M.A.No 2838 OF 2005

JUDGMENT:

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1. This appeal is filed by the appellant/United India Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') aggrieved by the order and decree dated 12.5.2005 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District & Sessions Judge (FTC), Medak in MVOP.No.416 of 2000 .

2. The respondents 1 and 2 herein /petitioners in MVOP filed the aforesaid Original Petition under Section 166 of the Act claiming compensation of Rs.2.00 lakhs on account of death of K.Ramulu (herein after referred to as 'the deceased') in a motor vehicle accident that occurred on 23.04.2000.

3. For the sake of convenience, the parties hereinafter

will be referred to as they arrayed in the Original Petition.

4. The brief averments made in the petition are that the deceased K. Ramulu was working as a labourer on the tractor bearing No.AP.23C.1594 which belongs to the first respondent. On 23.04.2000 at about 12.00 Noon, when the first respondent, one Tirupathi Rao, the farm servant of the first respondent, the deceased, driver-A.Mallaiah and one Premdas were returning from Zaheerabad to Tatpally from work, and when the tractor driver drove the vehicle in rash and negligent manner, it turned turtle, due to which the deceased received grievous injuries and died on the spot. It was further stated that the deceased used to earn Rs.2,000/- per month and due to the sudden death of the deceased, the petitioners suffered mentally and monetarily. Therefore the petitioners filed the aforesaid MVOP claiming compensation of Rs.2,00,000/-.

5. Before the Tribunal, the first respondent was set ex parte.

6. The second respondent-Insurance Company filed its counter opposing the claim of the claimants.

7. The brief averments made in the counter filed by the second respondent are that the policy issued by the Insurance Company does not cover the labourer, as such, the petition against Insurance Company is liable to be dismissed; that the tractor was used for the purpose other than mentioned in the policy and therefore the Insurance Company is not liable to pay any compensation; that the driver of the tractor has no valid driving licence and it also denied that the deceased used

to earn Rs.2000/- per month as labourer.

8. Basing on the above pleadings, the Tribunal framed three issues. To substantiate the claim, the claimants got examined P.Ws.1 and 2 on their behalf and got marked Exs. A.1 and 2. On behalf of the contesting respondents, none were examined, however, Ex.B.1 was marked.

9. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the tractor bearing No. AP 23 C 1594 by its driver, due to which the deceased died and awarded compensation of Rs.1,60,000/- with interest at 9% per annum.

10. Being aggrieved by same, the Insurance Company preferred the present appeal.

11. The learned Standing Counsel for the Insurance Company argued that as on the date of the accident, apart from the driver, there are three other persons travelled on the tractor and Section 123 of the Act prohibits to carry on persons more than prescribed and therefore, the Insurance Company is not liable to pay any compensation

12. Despite service of notice, none appeared for the respondents/claimants.

13. Having regard to the submissions made by the learned Counsel appearing for appellant-Insurance Company, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?

2. Whether the Insurance Company is liable to pay compensation?

14. **POINTS** 1 & 2 : A perusal of the evidence of P.Ws1 and 2 shows that as on the date of accident, apart from the driver-A Mallaih, three other persons, i.e. the deceased, one Premdas, Thirupathi Rao travelled on the tractor and the driver of the tractor being driven the tractor in rash and negligent manner, it turned turtle, due to which the deceased suffered grievous injuries and died on the spot. Section 123 of the Act contemplates that no person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle or on the bonnet of the vehicle. The said provision reads as follows:

“123. Riding on running board etc.,: (1) No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle

(2) No person shall travel on the running board or on the top or on the bonnet of a motor vehicle.”

15. As per the evidence on record, there is no dispute that as on the date of the accident, the deceased along with the driver and others travelled on the tractor bonnet/engine and due to rash and negligent driving of the tractor by its driver, the tractor turned turtle in which the deceased suffered grievous injuries and died on the spot. In view of Section 123 of the Act, the deceased was prohibited to travel on the bonnet/engine of the tractor and therefore it can be said that the conditions of the

policy Ex.B.1 were violated.

16. However, the learned Counsel for the appellant-Insurance Company submitted that half of the compensation awarded by the Tribunal was deposited at the time of preferring this appeal and the said amount was withdrawn by the claimants. He therefore conceded to restrict the compensation which was already withdrawn by the claimants inasmuch as the Insurance Company is not liable to pay any compensation on the ground that the owner of the tractor violated the condition of the policy. It is made clear that the Insurance Company has right to recover the amount which was drawn by the claimants from the insured.

17. For the foregoing discussion, the appeal is allowed to the extent indicated above.

18. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE ANIS

DATED 7TH JANUARY, 2016.
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