

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3130 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the respondent No.2 – New India Assurance Company Limited, aggrieved by the order and decree dated 09.03.2005 in O.P.No.674 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nalgonda (for brevity “the Tribunal”), whereby and whereunder, a sum of Rs.59,400/- was awarded as compensation with interest at 9% per annum from the date of petition till the date of deposit of amount, as against the claim of Rs.1,00,000/- laid under Section 166 r/w. Section 140 of the Motor Vehicles Act, 1988 (for brevity “the Act”) for the death of Narsimha, who sat on the engine of the Tractor and fell down and succumbed to the injuries while undergoing treatment in Government Hospital, mainly on the ground that there has been fundamental violation of the terms and conditions of the insurance policy, as the deceased was not supposed to sit on the engine of the Tractor, but the Tribunal went wrong in fastening liability on the Insurance Company.

2. The appellant-New India Assurance Company Limited is respondent No.2, respondent Nos.1 and 2 are the petitioners-claimants, and respondent No.3 – owner of the offending vehicle is respondent No.2 in O.P.No.674 of 2003. For the sake of convenience, in this judgment, the parties are referred to as they are arrayed in the O.P., before the Tribunal.

3. The facts, in brief, are that on 04.06.2003, the deceased – Narsimha, who is said to have been employed on the Tractor on labour work and when the driver of the Tractor drove it in a rash

and negligent manner, the deceased, who was sitting on the engine of the Tractor, fell down and sustained injuries and he was shifted to Government Hospital, where he succumbed to the injuries. The Station House Officer, Nalgonda Rural Police Station, registered a case in Crime No.57 of 2003 for the offence punishable under Section 304-A IPC against the driver of the Tractor.

4. The 1st respondent – owner of the Tractor and Trailer bearing No.AP 24A 7872 and 7873 filed a counter opposing the claim, however, raising a plea that since the Tractor and Trailer were insured with the 2nd respondent-insurer, in case any compensation is awarded, the same may be directed to be paid by the 2nd respondent, as the policy was in force as on the date of accident.

5. The 2nd respondent-insurer filed a separate counter opposing the claim. Additional counter was also filed by the 2nd respondent stating that the 1st respondent has not paid premium for the risk of labourers on the Tractor, that the insurance policy does not cover the risk of labourers and, therefore, the 2nd respondent-insurer is not liable to pay compensation.

6. Basing on the pleadings, the Tribunal framed the following three issues in order to fix the liability and determine the amount of compensation:

“(1) Whether the accident occurred on 04.06.2003 was due to rash and negligent driving by the driver of tractor AP 24A 7872 and 7873?

(2) Whether the petitioners are entitled to any compensation, if so, how much and from whom?

(3) To what relief?”

7. During enquiry, on behalf of the petitioners, P.Ws.1 and 2 were examined and marked Exs.A.1 to A.4. On behalf of the respondents, R.W.1 was examined, and marked Ex.B.1 – copy of the insurance policy.

8. On appraisal of evidence on record, on Issue No.1, the Tribunal, while observing that the driver of the Tractor and Trailer permitted the deceased to sit on the engine and drove the said Tractor in a rash and negligent manner, held that the driver of the Tractor and Trailer is responsible for taking place of the accident. On Issue No.2, the Tribunal has taken the age of the deceased as 60 years basing on the entries in Ex.A.3 - Postmortem Examination Report and by taking the income of the deceased at Rs.50/- per day and after deducting $\frac{1}{3}^{\text{rd}}$ of the wages towards personal expenses of the deceased, the loss of dependency was arrived at Rs.33/- per day, which worked out to Rs.11,880/- per annum, and after applying the multiplier '5' as per the second schedule, the amount of compensation was arrived at Rs.59,400/- (Rs.11,880/- x 5) with interest at 9% per annum from the date of petition till realisation.

9. The aforesaid order is under challenge in the present Civil Miscellaneous Appeal by the 2nd respondent-New India Assurance Company Limited, contending in the grounds of appeal, that the Tribunal went wrong in viewing the deceased as an employee of the owner of the vehicle, though he was a worker under Forest Department, that the deceased was a third party as he was travelling on a mudguard of the offending vehicle and hence he is an unauthorised passenger, and that merely because the Tractor and Trailer was hired, it cannot be said that the deceased was a worker or labourer of the owner of the vehicle and, therefore, the impugned order is unsustainable. Lastly, it is contended that the

deceased ought to be treated as an unauthorised passenger travelling in a goods vehicle as he was sitting on the mudguard of the vehicle and accordingly sought to set aside the order and decree.

10. Heard Sri P. Harinatha Gupta, learned Standing Counsel for the appellant-insurer. Though the matter was adjourned twice on 03.02.2016 and 04.02.2016 to afford an opportunity to the respondents-claimants, there is no representation on their behalf. Perused the impugned order and the material on record.

11. The manner in which the accident had occurred is not in dispute. The deceased was sitting on the engine as can be gathered from Ex.A.1 – copy of F.I.R. and also from Ex.A.2 - copy of the charge sheet. While fastening the liability, the Tribunal has recorded a finding, which reads as follows:

“But, in the case on hand, it is not since the deceased-Narsimha was working as Labourer on the tractor which met with the accident the citations are not applicable and as per the citations relied on by the petitioner in 2000(2) ALD 620 since the policy is covered third party risk, the petitioners are entitled to claim the compensation from the second respondent, the insurance company and accordingly this issue is decided in favour of the petitioners and against the respondent.”

12. A mere circumstance that the driver of the Tractor allowed the deceased to sit on the engine of the Tractor is not a ground to view that the deceased was authorised to sit there. Such circumstance accounts for violation of the terms and conditions of the policy and, therefore, the Tribunal wholly went wrong in recording the aforesaid finding. Thus, no liability can be fastened on the 2nd respondent - Insurance Company, at all.

13. Therefore, the impugned order dated 09.03.2005, to the extent of fastening liability on the 2nd respondent-Insurance

Company, who is the appellant herein, is set aside. As seen from the proceeding sheet in the instant appeal, as it was represented that the appellant-Insurance Company has already deposited the compensation amount awarded by the Tribunal, this Court, by order dated 23.11.2005 in MACMA.MP.No.5449 of 2005 in MACMA.No.3130 of 2005, while granting interim stay, directed the appellant-Insurance Company to deposit the interest and costs and on such deposit, the respondents-claimants were permitted to withdraw the same without furnishing any security. So, in case, the amount has already been withdrawn by the respondents-claimants, the appellant-Insurance Company is at liberty to recover the same from the owner of the offending vehicle, who is respondent No.3; and if the amount is still lying to the credit of the O.P., the appellant-Insurance Company is at liberty to seek for return of the said amount and, in which case, the respondents/claimants are directed to recover the amount of compensation from the owner of the offending vehicle.

14. Subject to the above direction, the Civil Miscellaneous Appeal is allowed. No order as to costs.

15. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

08.02.2016.

Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3130 of 2005

08.02.2016
Msr