

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.1238 of 2010

JUDGMENT:

This appeal is filed by the insurance company –2nd respondent in O.P.No.1450 of 2004, against the award dated 23.07.2009 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Khammam (for short “the Tribunal).

The respondents/claimants filed the claim petition claiming a compensation of Rs.5,00,000/- on account of death of Moloth Lachiram, who died in a motor accident that occurred on 19.09.2002. The claimants are the wife and children of the deceased.

The brief facts of the case are that on 19.09.2002 the deceased along with others loaded gravel into the Tractor-Trailor bearing registration No.AP20T-1856/57 at Chandragiri and unloaded the same at Mangalithanda and while returning to Chandragiri village and on the way at about 2 p.m the driver of Tractor-Trailor drove the vehicle in a rash and negligent manner at high speed without observing the ditches and applied sudden breaks, due to which, the deceased fell down and right back wheel of the tractor ran over on his stomach and as a result, the deceased died on the spot. The deceased was aged 30 years, he was hale and healthy and he was earning Rs.100/- per day by attending coolie works. The 5th respondent is the owner of the offending vehicle and the appellant is insurer.

The appellant/Insurance Company filed the counter denying its liability. It is contended that the accident occurred only due to negligence on the part of the deceased, who stood on the iron rod link between tractor and trailor, that the 5th respondent, who is the owner of the offending vehicle has violated the terms and conditions of the policy and hence, the insurance company is not liable to pay compensation.

On behalf of the claimant, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.5. On behalf of the Insurance Company, RW.1 was examined and marked Ex.B1 policy.

The Tribunal, after considering the oral and documentary evidence, has awarded compensation of Rs.4,08,000/- as against the claim of Rs.5,00,000/-. Questioning the said award, the appellant-Insurance Company filed this appeal.

The main contention of the learned counsel for the appellant/insurance company is that there is contributory negligence on the part of the deceased, who was at the relevant point of time, traveled by standing on a connecting rod in between the tractor and trailer and he slipped from the rod and fell on the ground and the wheels of the offending vehicle ran over him. The learned counsel further submitted that in addition to the deceased, 2 to 3 other labourers were travelling, one of whom was examined as PW 3 and as per his evidence the deceased was standing on the bar connecting to Tractor and Trailer at the time of accident and hence the appeal is to be allowed.

Perusal of the evidence of PWs 2 and 3 and the contents of Exs.A1 and A2 shows that at the relevant point of time of the accident, the deceased was standing on the rod which connects the tractor and trailer and while the vehicle was proceeding, the deceased slipped and fell on the ground and wheels of the offending vehicle ran over him. The deceased was not supposed to travel by sitting besides the driver of the tractor or by standing on the connecting rod of the tractor and trailer, which amounts to negligence.

In view of the oral and documentary evidence on record, I have no hesitation in holding there is contributory negligence on the part of the deceased, which resulted in his death. Taking into consideration the totality of the evidence on record, I feel that the just and reasonable contribution

made by the deceased for his death can be determined at 25%. In that view of the matter, the compensation awarded by the Tribunal can proportionately be reduced. After deducting 25% towards contributory negligence on the part of the deceased, the claimants are entitled to compensation at Rs.3,06,000/- together with interest @7.5% p.a thereon from the date of filing of the claim petition i.e., 30.12.2004, with costs.

The findings with regard to taking of the notional income of the deceased by the Tribunal @Rs.100/- per day, he being labourer, cannot be said to be in any way erroneous. The Tribunal has adopted proper multiplier, and after deducting 1/3rd towards personal expenses of the deceased, the Tribunal determined the compensation at Rs.4,08,000/-

In view of the above, the MACMA is allowed in part. The compensation awarded by the Tribunal is reduced from Rs.4,08,000/- to Rs.3,06,000/-.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 26th July, 2017
Dsr

M.S.K.JAI SWAL, J