

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**M.A.C.M.A. No.1375 OF 2006**

**JUDGMENT:**

Challenging the award dated 21.11.2005 passed in M.A.T.O.P.No.560 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-IV Addl. District Judge (FTC-II), Khammam (for short, 'the Tribunal'), the Insurance Company preferred the present appeal.

2. When the matter came up for hearing on 10.02.2017, there is no representation for the appellant and adjourned the matter to today under the caption 'For Orders'. Even today also, there is no representation on behalf of the appellant and hence heard arguments of the learned counsel for the respondents 1 to 3/claimants, and perused the material available on record.

3. For the sake of convenience, the parties hereinafter are referred to as arrayed before the Tribunal.

4. The brief facts of the case are as follows:

On 7.4.2004 when Yasarapu Durgaiah (deceased) went for the collection of Isthari leaves, while passing through the road near Narsimhulagudem cross-roads of Palair village, at about 11.30 hours a Lorry bearing No.AP-16-T-6485 came from Khammam side bound to Suryapet, in a rash and negligent manner and dashed the said Durgaiah. As a result of which, the deceased Durgaiah received grievous injuries on his vital parts and succumbed to injuries. In respect of the above incident, a case in Crime No.37 of 2004 of Kusumanchi P.S. was registered against the driver of the crime vehicle for the offence punishable under Section 304-A of I.P.C. It is stated that the deceased was aged about 44 years, and hale, healthy and energetic at the time of

the accident. He was working as a coolie and earn Rs.70/- per day and thus Rs.2,100/- per month and contribute the same towards welfare of his family. As he was the only bread-winner for his family, an application was filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.2,00,000/-.

5. The first respondent, owner of the vehicle, remained *ex parte* before the Tribunal. The 2<sup>nd</sup> respondent – Insurance Company filed counter disputing the age, avocation of the deceased and also the manner in which the accident took place.

6. Basing on the above pleadings, the Tribunal below framed the following issues:

- (i) Whether the deceased Yasarapu Durgaiah died due to rash and negligent driving of the Lorry bearing No.AP-16-T-6485 driven by its driver/R-1?
- (ii) Whether the petitioners are entitled to pay any compensation? If so, to what amount and from which of the respondents?
- (iii) To what relief?

7. In support of the claimants, P.Ws.1 & 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

8. After considering the oral and documentary evidence available on record, the Tribunal below held that the accident took place due to rash and negligent driving of Lorry bearing No.AP-16-T-6485 and awarded compensation of Rs.2,00,000/- towards general and special damages with interest at 7.5% per annum from the date of petition till the date of realization against both the respondents jointly and severally.

9. Aggrieved by the same, this appeal is filed by the appellant-Insurance Company contending that neither the said Lorry did not cause

any accident nor the driver has violated the terms and conditions of the policy and that the compensation awarded is excessive.

10. Learned counsel appearing on behalf of the respondents/claimants contended that there is ample evidence to believe that the deceased died due to rash and negligent driving of Lorry bearing No.AP-16-T-6485. The tribunal below had adopted suitable multiplier considering the age of the deceased i.e., 44 years, and granted just and reasonable compensation of Rs.2 lakhs to the respondents/claimants, who are the parents and physically handicapped brother of the deceased.

11. In view of the contentions raised in the appeal, the following points have come up for determination:

- (i) Whether Yasarapu Durgaiah died due to rash and negligent driving of the driver of Lorry bearing No.AP-16-T-6485?
- (ii) Whether the compensation granted in favour of the respondents/claimants is excessive?
- (iii) Whether the Tribunal had violated the terms and conditions of the policy, marked as Ex.B1?

12. P.W.1 (claimant No.1) had clearly deposed about the age and earnings of the deceased and also the manner of the accident that occurred due to rash and negligent driving of the driver of Lorry bearing No.AP-16-T-6485. Admittedly, he is not an eye-witness to the occurrence of the accident.

13. The evidence of P.W.2 reveals that on 7.4.2004, at about 11.30 hours, Yasarapu Durgaiah, after collecting Isthari leaves, and, was passing through the road near Narsimhulagudem cross-roads at Palair village, a Lorry bearing No.AP-16-T-6485 came from Khammam side and dashed the said Durgaiah, as a result of which he died on the spot. Ex.A1 - certified copy of First Information Report and Ex.A2 - certified

copy of charge-sheet reveal the same. As per Ex.A-3 - Postmortem report, the deceased died due to multiple injuries. As per Ex.A-4 - Motor Vehicles Report, there is no mechanical defect in the Lorry bearing No.AP-16-T-6485. Ex.A5 is the driving license of the driver of crime lorry. Ex.B1 is the certified copy of policy insured.

14. Therefore, as seen from the above evidence, it can be safely concluded that Yasarapu Durgaiah died due to rash and negligent driving of the driver of Lorry bearing No.AP-16-T-6485. The Tribunal below held the same after analyzing the entire evidence on record. No other view can be taken.

15. The Tribunal below while taking the age of deceased as 44 years and income of the deceased at Rs.70/- per day, adopted the multiplier '15', and determined the compensation payable to the petitioners/claimants at Rs.2 lakhs.

16. As seen from Ex.B1 Copy of Policy pertains to Lorry bearing No.AP-16-T-6485 was validly insured with the appellant - Insurance Company. There is no evidence that the driver of the Lorry violated the terms and conditions of the policy. So, as per the entire evidence on record, award of compensation of Rs.2 lakhs is just and reasonable and to tag the liability on the appellant - Insurance company, the tribunal below has assigned sufficient reasons, holding valid insurance of crime vehicle. This Court cannot find any infirmity in the impugned order.

17. Thus, all the points are answered in favour of the respondents/claimants.

18. In the result, impugned order is confirmed and the Appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dt. 17.02.2017  
GBS

**Dr. Shameem Akther, J**

