THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.527 of 2005

JUDGMENT:

The appellant/National Insurance Company Limited preferred this appeal against the order and decree dated 18.12.2004 passed in M.V.O.P.No.300 of 1999 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Krishna, Machilipatnam.

2. Heard learned counsel for appellant and learned counsel for respondent No.7 and perused the record. There is no representation on behalf of respondents 1 to 4-claimants.

3. The facts, in brief, are that on 02.02.1998 at 2.30 PM., while the deceased Nagisetti Srinivasa Rao was driving his lorry bearing No.AP-13T-7567 from Calcutta to his village after unloading the fish and when he reached near Kothapet N.H.5 road junction, another lorry bearing No.AP-9U-6045 came in opposite direction at high speed in a rash and negligent manner without blowing horn and dashed against his lorry, due to which, he sustained grievous injuries and succumbed to those injuries while undergoing treatment in the hospital. The claimants being wife, daughter and parents of the deceased filed the claim petition claiming compensation of Rs.2,50,000/- against the respondents.

4. R1 and R3 remained *ex parte* and R2 and R4 filed counters denying the averments made in the claim petition and contended that the deceased drove his vehicle in a rash and negligent manner

and caused the accident and the compensation claimed is highly excessive.

5. Based on the pleadings, the Tribunal framed four issues. To substantiate the claim, P.W.1 was examined and Ex.A1-Attested copy of FIR, Ex.A2-Attested copy of Post Mortem Certificate, Ex.A3-Photostat copy of inquest report, Ex.A4- Copy of T.C. Ex.A5-Birth Certificate and Ex.A6-Driving Licence were marked on behalf of the claimants. No evidence was adduced on behalf of respondents, but Ex.B1-Copy of policy and B2-Copy of charge sheet were marked on their behalf.

6. After considering the entire evidence on record, the Tribunal awarded compensation of Rs.2,36,000/- with interest at 9% per annum from the date of petition till the date of award.

7. Learned counsel for appellant-insurance company would submit that though the entire record reveals the rashness and negligence on the part of the driver of crime lorry belonging to the 7th respondent, the Tribunal erred in tagging 20% liability against the appellant.

8. Learned counsel for respondent No.7 would submit that the accident occurred due to rash and negligent driving of the deceased while driving the lorry bearing No. AP-13T-7567 and the Tribunal erred in tagging the liability at 80% on the part of 7th respondent insurance company.

9. Admittedly, P.W.1, who is the wife of deceased, is not an eyewitness to the occurrence of the accident. Though the appellant was given an opportunity to rebut the contentions, no witness was examined on its behalf. The Tribunal, while appreciating the entire evidence on record, held that in the circumstances of the case, the maxim *res ipsa loquitor* can be applied to determine the negligence on the part of the crime vehicle. Admittedly, both the vehicles involved in the accident are lorries. There is record to show that the accident occurred due to rash and negligent driving of the driver of lorry bearing No.AP-9U-6045, but there is no criminal record to show that there was rashness and negligence on the part of the deceased while driving the lorry bearing No.AP-13T-7567. Scene of offence panchanama was not filed to show the occurrence of accident. Had the deceased been careful in driving his lorry, he would have averted the accident. Therefore, it cannot be said that the principle of *rep ipsa loquitor* cannot be applied to the facts of the case on hand. The Tribunal has discussed the entire evidence on record and ultimately granted compensation of Rs.2,36,000/- with interest at 9% per annum. Further, the Tribunal has rightly taken the contributory negligence at 20% on the part of the deceased and 80% on the part of the driver of crime vehicle bearing No.AP-9U-6045 and accordingly, fastened the liability on the part of both the insurance companies respectively. Therefore, I find no infirmity in the order impugned to take a different view and the order under appeal is liable to be confirmed.

10. In the result, the appeal is dismissed confirming the order impugned. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

Dr. SHAMEEM AKTHER, J

4th October, 2017
sj