

HON'BLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No.2212 of 2009

JUDGMENT :

The appellant/respondent No.2, aggrieved by the Award and decree, dated 21.02.2008, passed in M.V.O.P.No.138 of 2005 by the learned Motor Accidents Claims Tribunal-cum-II-Additional District Judge, Kadapa at Proddatur, (for short, 'the Tribunal') preferred this appeal contending that the Insurance Company/appellant is not liable to pay compensation since the deceased was traveling as an unauthorized passenger in the lorry and the insured contravened the terms and conditions of the policy. Therefore, the finding of the Tribunal that the deceased was traveling as a coolie in the lorry is unsustainable.

2. The brief facts of the claim petition are that the deceased-Ramakrishna was a coolie. On 02.04.2003, while the deceased was traveling in the lorry bearing No.AP-04-U-2415 of the 1st respondent as a worker, the driver of the lorry drove the vehicle in a rash and negligent manner with high speed and lost control, as a result, the vehicle dashed two trees on the road margin, resulting death of Ramakrishna and cleaner of the lorry on the spot.

3. The Tribunal, having considered the pleadings of the claim petition and also the pleas of the 2nd respondent in the counter, settled the following issues:

1. Whether the deceased S. Ramakrishna died in a motor accident that occurred on 02.04.2003 at 10.30 a.m. due to rash

and negligent driving of the Lorry No.AP-04-U-2415 by its driver?

2. Whether the petitioners are entitled to the compensation as prayed?
3. To what relief?

4. Before Tribunal, on behalf of the claimants, PWs.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the 2nd respondent, RW.1 was examined and Exs.B.1 and B.2 were marked.

5. The main contention of the appellant is that the presence of the deceased on the lorry at the time of accident was as a gratuitous passenger, therefore, the appellant-Insurance Company is not liable to pay compensation.

6. On the other hand, it is the contention of the claimants that PW.2 engaged the lorry of the 1st respondent for transporting goods to Nellore and he engaged the deceased as a worker and his presence in the said lorry was as a worker, but not as a gratuitous passenger. The 1st claimant, who is wife of the deceased, is examined as PW.1 and her clinching evidence is that she made a claim on behalf of herself and her son due to the death of her husband in a motor vehicle accident that occurred on 02.04.2003 at 10.30 a.m. Her consistent evidence is that on 01.04.2003 her husband Ramakrsihna went in the lorry of the 1st respondent bearing No.AP-04-U-2415 to Nellore to unload the cucumber belonging to one Ramanaiah and after unloading the same, the deceased was returning on the same lorry with empty cucumber bags to Proddatur and on 02.04.2003 at 10.30 a.m. after

passing Allampadu cross roads on Nellore-Mumbai State Highway at a distance of 1 ½ km. towards east from Marripadu bus-stop, the driver of lorry drove the vehicle in a rash and negligent manner with high speed and lost control over the vehicle and dashed against two tamarind trees situated in the road margin, as a result, the cleaner of the lorry and her husband sustained serious injuries and died on the spot. She admitted in the cross-examination that she is not a direct witness to the accident. The only suggestion put to her is that her husband was not a coolie on the lorry at the time of accident, which she denied.

7. PW.2, who engaged offending lorry on hire, deposed that the deceased was a coolie at the relevant date of accident. The evidence of PW.2 clinches the issue that he engaged lorry bearing No.AP-04-U-2415 of the 1st respondent in order to transport cucumbers from his village to Nellore and also engaged the deceased as a coolie in order to unload the same at Nellore and after unloading the same at Nellore, they started in the same lorry with empty cucumber bags in order to come to their village on 02.04.2003 at 10.30 a.m. and when the lorry passed Allampadu cross roads at a distance of 1 ½ km. towards east from Marripadu bus-stop, the driver of the lorry drove the vehicle in a rash and negligent manner with high speed, due to which he lost control over it, as a result, the lorry dashed against two tamarind trees situated in the road margin.

8. Ex.A.1 is the certified copy of the F.I.R. Ex.A.7 is the certified copy of charge sheet and Ex.A.4 is the M.V.I. report. In Ex.A.1 there is a specific assertion that on 02.04.2003 the complainant, who also sustained injuries in the same accident, boarded the lorry bearing No.AP-04-U-2415. The Investigating Officer, who filed charge sheet- Ex.A.7 against the driver of the lorry bearing No.AP-04-U-2415, asserted that on 01.04.2003 night the driver loaded cucumber belonging to Ramanaiah-PW.2 at Proddatur and proceeded to Nellore along with cleaner and Ramakrishna-deceased and after selling cucumbers and when returning to Proddatur in the same vehicle, on 02.04.2003 at about 10.30 hours on the way, the driver of the lorry crossed Allampadu cross-road on Nellore-Mumbai State Highway at a distance of 1 ½ km. towards east from Marripadu bus stop centre, the driver drove the vehicle in rash and negligent manner. The evidence of PW.2 supported by Exs.A.1 and 7 establish that PW.2 engaged lorry for transporting cucumbers and also engaged the deceased as a worker for unloading the cucumbers at Nellore and after selling away the cucumbers, while returning with empty cucumber bags along with the worker and at the time of accident, the presence of the deceased in the said lorry is as a worker, but not as a gratuitous passenger. The motor vehicle inspector under Ex.A.4 opined that the accident was not due to any mechanical defects of the vehicle.

9. In view of the facts and circumstances stated above, I am of the considered view that PW.2 is a proper person to speak about the

presence of the deceased in the lorry at the time of accident. Exs.A.1 and A.7 support the evidence of PW.2 and established that the presence of the deceased on the lorry on 02.04.2003 at 10.30 a.m. at the time of accident was as a worker. After elaborate discussion of the evidence, both oral and documentary, the Tribunal came to right conclusion that the deceased was worker on the lorry. Therefore, the claimants are entitled for compensation. The appellant being insurer has to indemnify the liability of the 1st respondent by virtue of Ex.B.2 which was in force by the date of accident. Further, I find that the Tribunal taking into consideration the age of the deceased and his income at Rs.15,000/- per annum, granted just compensation, which does not warrant any interference.

10. Accordingly, the appeal is dismissed with costs while confirming the award and decree, dated 21.02.2008, passed in M.V.O.P.No.138 of 2005 by the learned Motor Accidents Claims Tribunal-cum-II-Additional District Judge, Kadapa at Proddatur.

11. Miscellaneous petitions pending, if any, shall stand closed.

N. BALAYOGI, J

22nd September 2017.

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