

**THE HON'BLE SRI JUSTICE N. BALAYOGI**

**MACMA No.1820 of 2009**

**Date: .06.2017**

**Between:**

United India Insurance Co.Ltd.,  
Represented by its Divisional Manger,  
Opposite to Suryamahal, Srikakulam town,  
Mandal and District.

... Appellant/Respondent No.2.

**And**

Boosara Ramalakshmi and others.

... Respondents



**THE HON'BLE SRI JUSTICE N. BALAYOGI**

**MACMA No.1820 of 2009**

**JUDGMENT:**

The insurance company aggrieved by the order of the Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Srikakulam, dated 08-09-2008 in O.P.No.184 of 2005 preferred this appeal besides other grounds on the ground that since the deceased himself is in negligent, while driving the tractor & trailer, the petition under Section 166 of the Motor Vehicles Act is not maintainable.

2. Further, the Tribunal failed to consider that the deceased himself violated the terms and conditions of the permit and policy as at the time of accident having used for carrying passengers. The Tribunal ought to have restricted the liability to the extent of provisions of Workmen Compensation Act and also applying multiplier '17'.

3. The respondents failed to appear and advanced their arguments.

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

The first petitioner is the wife, petitioners 2 & 3 are minor daughters and petitioners 4 & 5 are parents of the deceased. While so on 15-02-1999, while the deceased driving tractor & trailer bearing No.APS 6926 & 6927 on account of uneven road condition, the driver slipped from the tractor fell on the road resulting which, the rear wheels of the tractor & trailer ran over on the head of the deceased and he died on the spot.

5. P.W.1 is no other than the wife of the deceased- Surya, whereas P.W.2 is an eye-witness to the accident. P.W.2 is consistent

that while the deceased was driving the tractor & trailer with due care and caution, suddenly slipped from the tractor, fell down on the road and the rear wheel of the trailer ran over on his head. In Ex.A1- First Information Report, it was mentioned that the tractor & trailer ran over a stone, the vehicle in question was leaped and consequently deceased fell down and the wheels of the trailer ran over on the head of the deceased. The investigating officer also after thorough investigation filed the charge sheet under Ex.A2, wherein he found that the accident took place due to rash and negligent driving of the deceased himself, but not due to any other purpose.

6. The Tribunal in its order observed that the deceased cannot blow hot and cool air at the same time. Exs.A1 & A2 are silent with regard to the condition of the road i.e., uneven. Therefore, the Tribunal disbelieved the evidence of P.W.2 that the accident occurred due to uneven road condition.

7. With regard to maintainability of the O.P., in the Tribunal, the Tribunal considered the evidence of P.Ws.1 & 2 and found absolutely there is no any rebuttal evidence produced by the respondents. It is not in dispute that the deceased was driver of the vehicle in question at the relevant time of accident under the first respondent. The accident took place while the deceased was driving the tractor & trailer. Therefore, there is relationship between the first respondent and the deceased i.e., employer and employee.

8. Further the evidence of P.Ws.1 & 2 corroborated and supported with Exs.A1 & A2 established that the accident took place while the deceased was under employment. Exs.A1 & A2 clinches the issue that the accident took place while the deceased and others including

P.W.2 were going to Chilakapalem to see Burrakatha, but not for any other purpose.

9. Admittedly, the deceased was under the employment as a driver of the first respondent at the time of accident. The first respondent remained ex-parte. There is no rebuttal evidence adduced either by the first respondent or the second respondent to the evidence of P.Ws.1 & 2. The facts on record clearly established that the first respondent allowed the deceased and others including P.W.2 to proceed to Chilakapalem to witness Burrakatha and handed over the tractor & trailer to the deceased. The above facts clearly established that the accident took place during the course of employment of the deceased.

10. No doubt, a claim can be made under Workmen Compensation Act irrespective of the fact that the accident took place due to the rash and negligence of the deceased himself. Under Section 166 of the Motor Vehicles Act, the claimants have an option to file a claim either under workmen compensation act or under the motor vehicles act. Therefore, the petition under Section 166 of the M.V Act is maintainable. Accordingly, the findings and conclusions arrived by the Tribunal that the MVOP is under 166 of the M.V Act is maintainable and tenable.

11. With regard to the application of multiplier, there is evidence of P.W.1 that the deceased was working as a driver and earning Rs.4,000/- per month. As already discussed above, the deceased working as a driver under the first respondent, which is supported by Exs.A1 to A4. With regard to income of the deceased, the claimants did not file any document. In the absence of any such documentary evidence, the Tribunal taking into consideration the age of the

deceased as 30 years and cost of living, the normal salary paid to the drivers, took the monthly income at Rs.1800/-, which is very meager and applied multiplier '17'. As per **Sarla Verma v. Delhi Transport Corporation** (2009 ACJ 1298 (SC)), the multiplier applied to the age group of 17 to 30 years is '17'. Therefore, the multiplier applied as '17' can be sustained.

12. The Tribunal, having considered the age of the deceased at 30 years and monthly income at Rs.1,800/ per month applying '17' multiplier awarded a compensation of Rs.2,69,300/- which is just compensation and allowed 7.5% interest. There is no any legal infirmity in the findings or any reason of the Tribunal warranting interference. There are no sufficient satisfactory grounds or legal infirmities warranting interference in the appeal.

13. Therefore, the appeal fails and accordingly, the appeal is dismissed with costs, while confirming the order in O.P.No.184 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Srikakulam, dated 08-09-2008.

14. Advocate fee is fixed at Rs.2,000/-.

15. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

**Date: -06-2017.**  
mrb

**JUSTICE N. BALAYOGI**

