

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.595 of 2006

JUDGMENT:

This appeal is arising out of the decree and judgment, dated 04.10.2005 passed in O.P.No.378 of 2003 by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Ranga Reddy District (for short 'the Tribunal').

The appellant is the United India Insurance Company Limited. Respondents 1 to 5 are the petitioners, who filed O.P.No.378 of 2003 under Sections 163-A and 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.3,00,000/- on account of the death of the deceased, Mokati Naresh Kumar, in a motor vehicle accident.

The brief facts of the case are that on 27.04.2003 at about 2:10 P.M., the deceased M.Naresh Kumar was going on his Luna bearing No.ATI-6605 with another as pillion rider from R.T.C. colony to Anandbagh, a Telco Goods Carriage vehicle bearing No.AP10T-8291 coming from RTC colony towards Anandbagh driven in a rash and negligent manner at high speed, hit the Luna of the deceased, due to which, the deceased fell below the right wheel of the said tipper and died on the spot. The deceased was earning Rs.5,000/- per month. He was spending his income for the maintenance of the petitioners. On account of the sudden death of the deceased, the petitioners 1 and 2, being the parents, petitioners 3 and 4 being brothers and petitioner No.5 being unmarried sister have lost their dependency. The Tribunal on consideration of the evidence awarded compensation of Rs.2,28,000/- with proportionate costs together with interest at

7.5% per annum. The appellant aggrieved by the impugned order preferred this appeal.

Heard learned counsel for the appellant and respondents.

Learned counsel for the appellant submitted that the Tribunal has considered the income of the deceased as Rs.2,000/- per month without there being any proof produced by P.W.1. It is further submitted that the driver of the crime vehicle was having non-transport light motor vehicle driving licence, whereas the vehicle involved in the accident was a transport vehicle, a tipper lorry. It is further submitted that in view of the fact that the driver of the crime vehicle was not possessing valid driving licence, the insurer was not liable to pay compensation.

Learned counsel for the respondents submitted that the Tribunal has taken the very minimum of notional income of the deceased which does not require any interference. Learned counsel for the respondents, placing reliance on a decision of the Apex Court in **S.Iyyapan v. United India Insurance Co. Ltd.**¹, submitted that in a case where the driver of the crime vehicle is possessing a driving licence to drive light motor vehicle and drives a transport vehicle, the insurer is liable to pay the compensation at the first instance and recover the same from the owner of the crime vehicle. He further submitted that the Tribunal held that the driver of the crime vehicle was not having valid licence to drive the transport vehicle, but was driving non-transport vehicle, is a breach of conditions of insurance policy.

¹ (2013) 7 SCC 62

In the light of the above decision, the award passed by the Tribunal directing the appellant to pay the compensation does not require any interference.

In the result, the appeal is dismissed confirming the award passed by the Tribunal. The appellant is directed to deposit the entire amount within one month from the date of receipt of a copy of this order. On such deposit, the respondents are directed to withdraw the entire amount as per the apportionment made by the Tribunal. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

Date : 24.10.2017
ssp

GUDISEVA SHYAM PRASAD, J

