

HON'BLE SRI JUSTICE M. S. K. JAISWAL

MACMA No. 1090 of 2010

JUDGMENT:

This appeal is preferred by the appellant/ Insurance Company against the Order and Decree of the VII Additional District Judge (Fast Track Court) Visakhapatnam, dated 12.03.2010 in M.O.P.No.785 of 2006, by and under which the Tribunal granted a compensation of Rs.1,57,000/- for the death of one K. Prasanth in the accident that took place on 04.05.2005.

2. The brief facts of the case are that the Petitioners/ Claimants are the parents of the deceased Prasanth, who was a minor and studying 8th class. On 19.05.2004, the deceased along with his uncle purchased cement sheets, and boarded the offending vehicle i.e., Auto bearing No.AP31U-8240 at Arakuvely, after loading cement sheets to go to Malisingaram, and when the said auto reached near the school at Hataguda, Chinalabudu at about 12.30 hours, the auto driver drove the same in a rash and negligent manner with high speed, and unable to control it, and went to the road side slope, where the offending vehicle turned turtle. As a result of the said accident, the deceased sustained grievous multiple injuries, and after first-aid, shifted to K.G.Hospital, Visakhapatnam for better treatment, where the deceased succumbed to injuries and died on the same day at about 6.30 p.m. Hence, the claim petition by the parents of the deceased against

the Respondents, being the owner and insurer of the crime vehicle respectively to pay a compensation of Rs.2,00,000/-.

3. Before the Tribunal, the 1st respondent, who was the owner of the crime vehicle, remained *ex parte*. The 2nd respondent/ Insurance Company filed its counter denying all the material facts like age and avocation of the deceased, narration of the accident, involvement of the crime vehicle, rash and negligent driver of the driver, validity of the insurance policy and the injuries sustained by the deceased. The Insurance Company contends that the crime vehicle, being a goods vehicle, meant for carrying goods only, and as such carrying the passengers violates the policy conditions, and therefore, the Insurance Company is not liable to pay any compensation.

4. The Tribunal, after hearing both sides and considering the entire evidence on record, opined that the accident was occurred due to rash and negligent driving of the driver of the crime vehicle. The Tribunal further concluded that as per Ex.B.1 policy, the seating capacity in the vehicle is provided for two persons, and therefore the Tribunal, treating the deceased as owner of the goods, awarded the compensation and directed the Insurance Company to pay the same first and recover from the owner of the crime vehicle later, in view of the violation of the terms of the policy by permitting three persons to travel in the goods vehicle.

Aggrieved by the same, the Insurance Company preferred the present appeal.

5. Heard the learned counsel appearing for both the parties and considered the material on record.

6. The manner and method in which the accident took place, the date and time of the accident, the ownership of the auto and it's insurance with the appellant are not in dispute. The admitted facts are that the deceased was a boy, aged about 13 years and on the date of accident, he boarded the Auto along with goods, which he purchased, as is evident from Ex.A-5, Cash-Bill. The Insurance Policy, Ex.B.1 permits the owner of the goods to travel along with the goods. Therefore, the Tribunal has rightly granted compensation to the parents of the deceased boy against the respondents. However, since two more persons were traveling in the auto, which was in violation of the terms of the policy, the Tribunal directed the insurance company to indemnify the claimants first and recover the said amount from the owner of the vehicle. The said findings of the Tribunal cannot be said to be erroneous in any way and cannot be interfered with in the present appeal. The appellant did not challenge the order under appeal on any other grounds. Apart from that, the compensation awarded by the Tribunal is just and reasonable. Therefore, the appeal fails and liable to be dismissed.

7. In the result, the appeal is dismissed, confirming the order and decree of the Tribunal under appeal. As a sequel, the miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

M.S.K. Jaiswal, J.

Dt.24.07.2017

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Dated: 24.07.2017

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