THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 471 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the Oriental Insurance Company Limited, represented by its Branch Manager, Vijayawada, who is respondent No.2 in M.V.O.P. No.424 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nellore (for short, 'the Tribunal'), aggrieved by the order dated 05.09.2005, whereby, the Tribunal awarded an amount of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation, as against Rs.2,50,000/- claimed by respondent Nos.1 to 4 herein against the appellant-insurer and respondent No.5 herein, for the death of D.Venkata Narasa Reddy in a motor accident occurred on 19.01.2000.

2. The appellant herein, who is the insurer of the crime vehicle van bearing registration No.AP 16W 4708, is respondent No.2, while respondent Nos.1 to 4 herein, who are the mother, wife and children of the deceased, are the petitioners, and respondent No.5 herein is respondent No.1 in the original petition before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The case of the petitioners is that the said D.Venkata Narasa Reddy (deceased) was earning Rs.3,000/- per month by collecting milk from the farmers and selling the same and on 19.01.2000 at about 10-15 a.m., while he was travelling in a milk van bearing registration No.AP 16W 4708 towards Atmakur from Ananthasagaram side, the driver of the said van drove it in a rash and negligent manner at high speed, it turned turtle at a road

turning near Kothapalli, as a result of which, the deceased received grievous injuries and died. Hence, the petitioners claimed Rs.2,50,000/- from respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, i.e., van bearing registration No.AP 16W 4708.

5. Respondent No.1-owner of the crime vehicle remained *ex parte* before the Tribunal. Respondent No.2-insurer filed counter denying all the material allegations in the petition and contended that the driver of the vehicle had no valid and effective driving licence to drive the vehicle and the vehicle had no valid permit; the deceased was travelling in the vehicle as an unauthorised gratuitous passenger at the time of accident; and finally, prayed to dismiss the petition.

6. The Tribunal, after framing three issues and considering the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.3 and Exs.B.1 and B.2, awarded Rs.2,00,000/- as compensation in favour of the petitioners against both the respondents. Challenging the said award, respondent No.2-insurer preferred the present appeal.

7. Heard the learned counsel for respondent No.2-insurer (appellant herein). None appeared for the petitioners (respondent Nos.1 to 4 herein). The appeal against respondent No.5-owner is dismissed on 14.07.2016 for default. However, dismissal of the appeal for default against respondent No.5-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[1], wherein it is held that:

[1] 2001(1) ALT 495 (D.B.)

> "If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

8. The contention of the learned counsel for respondent No.2-insurer (appellant herein) is that the deceased was an unauthorised passenger in a transport goods vehicle, the risk of the deceased travelling in the milk van is not covered under the insurance policy, the Tribunal erroneously tagged liability on the insurer and therefore, prayed to exonerate the insurer from its liability.

9. Perused the order under appeal and the evidence on record. There is no dispute with regard to the rash and negligent driving of the driver of the van bearing registration No.AP 16W 4708, causing injuries to D.Venkata Narasa Reddy (deceased) and his death. There is also no dispute about the quantum of compensation granted by the Tribunal. The only question to be decided in this appeal is, whether respondent No.2-insurer (appellant herein) can be exempted from its liability to pay compensation granted by the Tribunal to the petitioners.

10. P.W.1 is the wife of the deceased. Though she has narrated about the accident in her chief-examination, she admitted in her cross-examination that she was not a direct witness to the accident. P.W.2 stated that he is working as a cleaner in the accident vehicle-milk van, he knew the deceased in this case, who was collecting milk from the villagers and supplying milk to Dodla Milk Dairy on commission basis. P.W.2 also stated that on 19.01.2000 at about 10-00 a.m., the deceased boarded the accident vehicle at Pathadevarayapalli village with two milk cans and the said van overturned at the turning near Kothapalli due to rash and negligent driving of the driver of the van. In the cross-examination, he reiterated the same. The evidence of P.W.3-Kolisetty Chandramohan reveals that he is a Supervisor in Dodla Milk Dairy, he is in-charge of Vinjamur branch, he is working in the said dairy for the last six years, he knew the deceased, who was an agent of milk dairy, the deceased used to collect milk on commission basis, the deceased was collecting about 100 litres milk per day and getting Re.1/- per one litre as commission. In the cross-examination, he reiterated the same. There is no iota of ocular or documentary evidence lead on behalf of the insurer to prove its contention that the deceased is a gratuitous passenger. As per the evidence of P.Ws.2 and 3, the milk van is engaged by Dodla dairy and the deceased was supplying milk to the said dairy on commission basis. There is no bar for the owner of the goods to engage agents and transport goods/milk to its dairy. Ex.A.1 is the certified copy of F.I.R. in this case, which also reveals that the deceased was a care taker of milk cans and he is not a gratuitous passenger. On perusal of the entire evidence, there is nothing to prove that the deceased was a gratuitous passenger. Under these circumstances, the contentions raised by the insurer do fail. The Tribunal, while determining this issue, had elaborately discussed the evidence on

record and held that the deceased was not a gratuitous or unauthorised passenger and that there is a valid insurance policy of the van in question with the insurer and ultimately, tagged liability on the owner and insurer of the van. These findings are based on record and there is nothing to take a different view. Therefore, the appeal fails and the order under appeal is liable to be confirmed.

11. Accordingly, this appeal is dismissed, confirming the impugned order, dated 05.09.2005 passed by the Tribunal in M.V.O.P. No.424 of 2000, in all respects.

12. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017

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