

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3299 of 2005

JUDGMENT

The appellant/National Insurance Company Limited preferred this appeal against the order and decree dated 06.01.2005 passed in O.P.No.318 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, West Godavari, Eluru.

2. Heard learned counsel for appellant/insurance company, learned counsel for respondents 1 and 2/claimants and Smt A. Jayanti, learned counsel for 5th respondent-United India Insurance Company Limited and perused the record.

3. The facts, in brief, are that on 05.03.2004, while the deceased Raju was going to Gudivakalanka as pedestrian to attend coolie work and when he reached near Gram Panchayat Society Tank, Madhavarpuam at about 7.00 AM., tractor and trailer bearing Nos.AP-16Y-0269 and AP-16TU-2126 proceeding towards Gudivakalanka, driven by its driver in a rash and negligent manner, dashed the deceased, as a result of which, he sustained severe injuries all over his body and thereafter, he succumbed to those injuries while undergoing treatment in the hospital. Due to sudden death of deceased, the claimants being parents lost his love, affection and deprived of his earnings. Hence, they filed the claim petition claiming compensation of Rs.2,50,000/- against respondents.

4. The 1st respondent filed written statement denying the manner of accident, age, occupation and income of the deceased and that the deceased himself was responsible for the accident.

5. The 2nd respondent filed memo adopting the written statement of the 1st respondent. The 3rd respondent filed written statement denying the averments made in the claim petition and that the compensation claimed is highly excessive.

6. The 4th respondent filed written statement stating that the accident took place due to the negligence of deceased and that the claim is excessive.

7. Based on the pleadings, the Tribunal framed three issues. To substantiate the claim, P.Ws.1 and 2 were examined and Ex.A1- True copy of FIR, Ex.A2-True copy of post mortem certificate, Ex.A3-True copy of MVI report, Ex.A4-True copy of charge sheet, Ex.A5-Photostat copy of permit and Ex.A6-photostat copy of certificate of registration, were marked. R.W.1 was examined and Exs.B1 and B2-Attested copies of policies were marked on behalf of respondents.

8. After considering the entire evidence on record, the Tribunal awarded compensation of Rs.1,81,300/- with interest at 9% per annum from the date of petition till the date of realization, payable by respondents 1 to 3 jointly and severally.

9. Learned counsel for appellant/insurer would submit that the tractor bearing No.AP-16Y-0269 was insured with the appellant as

well as 5th respondent and Exs.B1 and B-2, the copies of policies reveal the same and therefore, the Tribunal erred in fastening the liability only on the appellant to pay the entire compensation amount.

10. The material on record would show that the accident occurred due to rash and negligent driving of the driver of tractor bearing No.AP-16Y-0269, which hit the deceased, moving on foot and that there is no involvement of the trailer in the accident and as such, the Tribunal tagged the liability with the appellant along with the driver and owner of the tractor. But, as seen from Ex.B1-copy of policy, the tractor bearing No.AP-16Y-0269 was insured with the appellant/insurer and the insurance was valid from 27.06.2003 to 26.06.2004 and as per Ex.B2-copy of policy, the tractor bearing No.AP-16Y-0269 was also insured with the 5th respondent-United India Insurance Company and the insurance was valid from 02.08.2003 to 01.08.2004. The trailer number was not mentioned in both the policies.

11. The evidence and the documents reveal that the accident occurred due to rash and negligent driving of the driver of tractor bearing No.AP-16Y-0269. Since the said tractor was insured with the appellant as well as 5th respondent as per Exs.B1 and B2, this Court is of the view that both the insurance companies of tractor, its driver and owner are jointly and severally liable to pay compensation granted by the Tribunal. It is brought to the notice of this Court that the appellant had already deposited 50% of compensation before the Tribunal and same was withdrawn by the claimants. Under these

circumstances, the remaining 50% of compensation is directed to be deposited by R3 to R5 herein jointly and severally. Except this modification, the impugned order shall remain unaltered.

12. In the result, the appeal is allowed in part, modifying the award passed by the Tribunal directing R3 to R5 herein to deposit the remaining 50% of the compensation awarded by the Tribunal jointly and severally, within a period of two months from the date of receipt of a copy of this order, and on such deposit, the claimants are permitted to withdraw the same without furnishing any security. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

4th October, 2017

sj

Dr. SHAMEEM AKTHER, J

