

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.596 OF 2006

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant-National Insurance Company Limited, aggrieved by the order dated 07.12.2005 passed in O.P. No.121 of 2004, by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short, 'the Tribunal'); wherein the Tribunal awarded the compensation of Rs.2,10,000/-, against the original claim of Rs.3,50,000/-, with interest at the rate of 7.5% p.a. from the date of petition till realization, making Respondents 1 and 2 jointly and severally liable to pay the compensation.

2. Appellant herein is the 2nd respondent, insurer of the Jeep bearing registration No.AP 23B 5547 (for short, 'the jeep'), 7th respondent herein is the 1st respondent-owner of the crime vehicle, and Respondents 1 to 6 herein are the petitioners, who filed a petition before the Tribunal, under Section 166 of the Act claiming compensation of Rs.3,50,000/- on account of the death of one Dayyala Ramaiah (hereinafter referred to as 'the deceased'), who happened to be the husband of 1st petitioner, father of petitioners 2 to 5, and son of 6th petitioner, in a motor vehicle accident occurred on 06.12.2003.

3. The parties hereinafter will be referred to as arrayed before the Tribunal.

4. The case of the petitioners, in brief, is that on 06.12.2003, when the deceased boarded the jeep at Sadasivpet to go to Meka Vanampally village, and at about 12:00 noon when it reached near Hibs Company on the Sadasivpet-Mominpet Road, its driver drove it in a rash and negligent

manner at high speed and lost control over it; as a result of which, it turned turtle and the deceased received serious injuries, and on the way to Hospital, at Sadasivpet, he succumbed to injuries. Sadasivpet Police registered a case in Crime No.245 of 2003 for the offence punishable under Section 304-A I.P.C. against the driver of jeep. The deceased, while at the time of accident, was working as labourer, earning Rs.3,000/- per month and contributing the same to the petitioners. The petitioners, who lost their breadwinner, filed the petition seeking compensation of Rs.3,50,000/- against the respondents, who are owner and insurer of the jeep.

5. Respondent No.1-owner of the crime vehicle filed counter denying the averments made in the petition and contended that the driver of the jeep never drove it in a rash and negligent manner, but the petitioners by influencing the police, got foisted a false criminal case against the driver so as to claim compensation; the jeep was insured with Respondent No.2 and as such, even if the petitioners succeeded to prove their claim, respondent No.2 alone is liable to pay the compensation.

6. Respondent No.2-insurer filed counter denying the averments made in the petition and contended that the age and income of the deceased be put to strict proof and the deceased also contributed for the accident; it was further contended that the deceased was travelling as hired passenger in the jeep, amounting to violation of terms and conditions of the insurance policy; that the insured having violated the insurance policy conditions, colluded with the petitioners to cause loss to the insurer, as such, Respondent No.2 is not liable to pay compensation to the petitioners; and finally, prays to dismiss the petition.

7. The Tribunal, after framing issues and, after considering the evidence of P.Ws.1 and 2, R.Ws.1 to 4, and the documents Exs.A.1 to A.5 and Exs.B.1 to B.3, awarded the compensation of Rs.2,10,000/-, as stated hereinabove.

8. Aggrieved by the quantum of compensation awarded by the Tribunal, Respondent No.2-insurer of crime vehicle preferred the present appeal seeking to set-aside the order.

9. Heard the arguments of learned standing counsel for the appellant-insurance company and the learned counsel appearing on behalf of respondents-petitioners. None entered appearance on behalf of the 7th respondent-owner of the crime vehicle and there is no representation on his behalf.

10. Learned standing counsel for the appellant would submit that the deceased traveled as a hired passenger in the jeep and the insured had violated the terms and conditions of the policy, marked as Ex.B-1, the appellant-insurer is not liable to pay compensation to the petitioners. Learned standing counsel further submits that the Tribunal failed to believe the evidences of R.Ws.1 and 2 and Exs.B-1 to B-2; the crime vehicle has to be used only for the private purpose of its owner-1st respondent; Ex.B-1 does not cover the risk of boarded/hired passengers and finally submitted that the compensation awarded by the Tribunal is excessive and, ultimately, prayed to allow the Appeal.

11. On the other hand, learned counsel appearing for the respondents-petitioners would contend that the deceased was working as labourer under R.W.4, owner of the jeep, but he was not a hired/boarded passenger on the date of accident and as such the risk of the deceased is

covered under the original of Ex.B-1, hence the Appeal is devoid of merits and ultimately prayed to dismiss the Appeal.

12. In view of the submissions put forth by both the learned counsel, the following points came up for determination:

1. Whether the deceased was a hired passenger in the Jeep bearing No.AP 23B 5547?
2. Whether the award of compensation of Rs.2,10,000/- by the Tribunal is excessive?
3. To what relief?

13. **POINT No.1:** The appellant to substantiate his contention that the deceased was a boarded/hired passenger in the crime vehicle got examined its employee R.W.1, Assistant Administrative Officer, and R.W.2, Record Assistant in R.T.A. Office, Rangareddy District, R.W.3 is the driver of jeep and R.W.4 is the 1st respondent-owner of the jeep were examined and marked Exs.B-1 – copy of insurance policy, Ex.B-2 B-Register entry and Ex.B-3 Authorization letter. On behalf of the claim petitioners, P.Ws.1 and 2 were examined and Exs.A-1 to A-5 were marked. P.W.1, who is none other than son of the deceased, deposed about the dependency of the petitioners on the income of the deceased and corroborated with the petition averments and, ultimately, prayed to grant a compensation of Rs.3,50,000/-. P.W.2, who is a resident of Sadasivpet and fruit vendor, who traveled with the deceased in the jeep, deposed that he boarded the jeep along with Pasha and deceased; due to the rash and negligent driving of the driver of the jeep, it turned turtle resulting injuries to all the inmates of the jeep and they were being shifted to Mominpet Hospital and during the way to the Hospital, the deceased succumbed to the injuries. In the cross-examination by the learned

counsel for the 1st respondent, P.W.2 stated that he was examined in the criminal case. Learned counsel for the appellant-insurer before the Tribunal has also cross-examined this witness to discredit the manner in which the accident is said to have occurred. However, a suggestion was not put to this witness that the deceased was a hired passenger or paid traveling charges for traveling by the jeep and R.W.3, driver of the jeep, is the right person to state whether the inmates of the crime vehicle paid any hire charges or not. P.W.1 was also cross-examined with regard to the rash and negligent driving of the driver of the jeep.

14. The submission of learned counsel for the appellant-insurer is that the deceased was a hired passenger in the jeep, which is a private jeep, and this appellant is not liable to pay any compensation; the driver and owner of the jeep have violated the terms and conditions of the insurance policy. As per the evidence and the documents marked on behalf of the appellant, particularly Ex.B-1, copy of insurance policy, there was valid insurance in respect of the jeep, which was not disputed by the appellant. R.W.1, being the employee of the appellant-insurer, simply stated that the driver and owner of the jeep have violated the terms and conditions of the policy. Therefore, the petitioners are not entitled to claim compensation against the appellant-insurer. R.W.1 in his cross-examination admitted that they would appoint an Investigator in every case and in the instant case also they have appointed one V. Ramesh, Advocate, as Investigator but the Investigator's report is not filed in this case. However, as per the copy of F.I.R. marked as Ex.A-1, there is no mention that the inmates of the jeep were gratuitous or hired passengers, or they paid any charges to the driver of the jeep. R.W.2, Record Assistant in R.T.A. Office, Rangareddy District, deposed that the jeep stood registered in the name of R.W.4. As per Ex.B-2, B-Register, 6 persons can travel in the jeep. The

jeep can be used only for the personal use of the owner i.e., R.W.4. R.W.3, Shaffi Ahmed, deposed that he was the driver of the jeep and stated that the deceased used to do labour work under R.W.4. On the date of accident at about 11:30 a.m. when he was driving the jeep from Sadasivpet to Mominpet at Sadasivpet, the deceased requested him to drop him at Mominpet; so, he allowed the deceased to travel by the jeep, since the deceased was working with R.W.4, owner of the jeep. R.W.3 clearly and categorically stated that the deceased did not pay any fare for traveling by jeep on that day. R.W.3 further stated that the jeep was not used as passenger vehicle at any time. As per the record and the evidence on record, R.W.3 is holding professional driving license to drive the heavy motor vehicles. R.W.3 has also denied that the jeep was plied as a private taxi on the date of accident. R.W.4 in his evidence deposed that the deceased used to work under him as labourer. The jeep in question was not used as a private taxi and the deceased did not pay any fare. As seen from the entire evidence and material available on record, there is no cogent and legally acceptable evidence to believe that the deceased paid any fare or hire charges for his travel in the jeep on the date of accident. There is clear evidence that the deceased was working under R.W.4, 1st respondent, and due to that acquaintance, he was permitted to travel by the jeep.

15. In the light of the evidence of R.Ws.3 and 4, it cannot be held that the deceased was a paid passenger or hirer of the jeep. So, it is evident from the evidence of R.W.2 that 6 persons can travel in the jeep and as per the evidence of P.W.2, at the time of accident, one pasha, deceased and P.W.2 were traveling by the jeep. In view of the same there is nothing wrong about the deceased traveling by the jeep in question. While dealing with this issue, the Tribunal had given elaborate reasons and held that

there was no violations of the terms and conditions of the policy - Ex.B-1 and as such there is valid insurance of the jeep and the Tribunal rightly held that the respondents 1 and 2, being owner and insurer of the jeep, are jointly and severally liable to pay compensation to the petitioners. No other opinion can be substituted on this score.

16. **POINT Nos.2 and 3:** As far as awarding of compensation is concerned, the Tribunal has taken all the facts and circumstances into consideration and rightly granted a compensation of Rs.2,10,000/- against the claim of Rs.3,50,000/-, by calculating the compensation payable on different scores, taking the age of the deceased as 45 years and was working as labourer. There is also evidence to believe the petitioners 1 to 6 are the dependents on the income of the deceased and the 1st petitioner, who is the wife of the deceased, died during pendency of the Petition. Hence, the other petitioners *i.e.*, petitioners 2 to 6, being children and aged mother-in-law of the 1st petitioner are entitled for compensation and the compensation awarded by the Tribunal cannot be faulted and no other opinion can be substituted.

17. In view of the facts and circumstances, all the submissions canvassed on behalf of the appellant-insurer do fail and there is nothing to interfere with the well reasoned order passed by the Tribunal.

18. In the result, the Appeal is dismissed.

19. As a sequel, pending miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 24.03.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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