

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.2275 OF 2017

JUDGMENT:

The present appeal is disposed of at SR stage having allowed C.M.A.MP.No.15957 of 2002, filed seeking to condone the delay of 180 days in filing the appeal, vide separate docket order.

2. The present appeal is filed aggrieved over the order and decree, dated 15.10.2001, in M.O.P.No.1434 of 1998 on the file of learned IV Additional District Judge – cum – Chairman, Motor Accidents Claims Tribunal, Visakhapatnam, awarding a total sum of Rs.1,29,800/- as compensation to respondent Nos.1 and 2 – claimants, as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the death of one Shanmuga Shanmurgun, who is the father of respondent No.1 and brother of respondent No.2, fixing joint and several liability on the insured and the insurer.

3. Heard Sri Ravi Shanker Jandhyala, learned Standing Counsel for the appellant – Oriental Insurance Company Limited, and Sri Venkateswara Rao Gudapati, learned counsel for respondent No.1.

4. None appears for respondent Nos.2 to 4, despite service of notice by way of publication and directly.

5. Perused the order passed by the Tribunal and the findings recorded on each of the issues and also the material placed on record.

6. The Tribunal, having framed three issues, examined PWs.1 and 2 and got marked Exs.A1 to A4 on behalf of respondent Nos.1 and 2 – claimants, and on behalf of the insured and insurer, examined RW.1 and got marked Exs.B1 to B3, and held that the driver of the tractor trailer was negligent and occasioned the accident, resulting in death of the deceased and, since, the insurance policy was in force on the date of accident, by the order under challenge, saddled the Insurance Company also to pay the awarded amount with interest at 9% per annum. The Tribunal also apportioned the amount between respondent Nos.1 and 2 – claimants.

7. Aggrieved over the same, the present appeal is preferred by the Insurance Company on the ground that there has been violation of the terms and conditions of the policy and the deceased while attempting to commit theft of Manganese bags from the tractor trailer, in the process, came under the wheel of the tractor and trailer and sustained injuries and subsequently, succumbed to the injuries.

8. In the grounds of appeal, no violation is complained, but, however, tried to attribute negligence to the deceased himself stating that at the time when the deceased was trying to steal the Manganese bags by boarding the tractor, he fell down and sustained injuries, which fact was lost sight of and that occasioned the Tribunal to proceed on a wrong approach and granted the compensation, which ought not to have been granted.

9. It is not the definite case of the Insurance Company that the deceased was an unauthorized passenger. Though, the insurer tried to project that the deceased, actually, while committing theft by climbing the trailer, fell down and sustained injuries, the evidence is otherwise. When the documentary evidence would show the negligence on the part of the tractor driver, belying the stand taken by the insurer, certainly, it cannot be said that there is violation of the terms and conditions of the policy or negligence on the part of the deceased in attempting for the accident. Therefore, there is no merit in the present case.

10. Hence, the appeal is dismissed confirming the order and decree, dated 15.10.2001, in M.O.P.No.1434 of 1998 on the file of IV Additional District Judge – cum – Chairman, Motor Accidents Claims Tribunal, Visakhapatnam, including the apportionment made by the Tribunal.

11. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 01, 2017.
MD