THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.2513 OF 2005

ORDER:

Aggrieved by the order, dated 07-06-2005, passed by the Chairman, Accident Claims Tribunal-cum-II Addl. District Judge, Nalgonda at Suryapet (for brevity 'the Tribunal'), in O.P.No.284 of 2004, the present appeal is filed by the National Insurance Company, which has been arrayed as 2nd respondent in the above mentioned O.P.

2. The contentions raised by the Insurance Company to assail the order of the Tribunal are briefly as under:-

The Insurance Company's main contention is that no absolute liability is laid as against the insured/assured to pay compensation to the claimants. The Tribunal instead of making the insured alone liable has held that the Insurance Company is liable to pay compensation jointly along with vehicle owner. The second contention of the Insurance Company is that at the material point of time, ten persons were traveling in the auto bearing No.AP 24U 9581. Though the said fact was incorporated in the F.I.R. and the charge sheet, ignoring the other material evidence and the statement made by the witnesses who the claimants examined to prove their case, had made the Insurance Company liable jointly and severally along with the vehicle owner instead of exonerating it from its liability. The accident in question has taken place due to collision between both the vehicles and in such circumstances, the driver of both vehicles were to be held responsible for the occurrence of the accident. But the Tribunal held the driver of the lorry alone is responsible for the occurrence of the accident. The Tribunal ought to have apportioned the liability of payment of compensation in the ratio of 50:50 amongst the owners and the insurers of the auto and the lorry bearing No.AHH 3747 which involved in the accident. The next contention of the Insurance Company is that Chinna Nagaiah (hereinafter referred to as 'the deceased') was aged about 44 years by the date of the accident. Hence, the Tribunal ought not to have applied the multiplier 15. The fourth contention of the Insurance Company is that the Tribunal wrongly awarded a sum of Rs.15,000/- under the head of loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate etc., These are the main grounds urged by the Insurance Company to challenge the order passed by the Tribunal.

3. I have perused the order, dated 07-06-2005 passed by the Tribunal which the Insurance Company intends to get it set aside on various other grounds mentioned above.

4. Respondents 1 to 5 herein are the wife, children and aged mother of the deceased. They have laid the claim before the Tribunal against the owner and the insurer of the lorry bearing No. AHH 3747 with the main contention that on 13-09-2003 at about 1.45 p.m. while the deceased was proceeding in the auto bearing No. AP 24U 9581 to go to Suryapet, when the auto reached the outskirts of Gandhinagar village, the above mentioned lorry came opposite to the auto in a rash and negligent manner with high speed and dashed the auto in which he was traveling as a passenger. The above accident resulted in instantaneous death of the deceased and that the Police of Suryapet Rural registered a crime as against the driver of the lorry bearing No. AHH 3747 under Sections 304-A and 337 IPC.

5. The claimants had examined Sunkari Janakiramulu-P.W.2, one of the eye-witness to the incident and he during the course of his examination spoke about the manner in which the accident took place. The Tribunal relying on the evidence of P.W.2, whose evidence was corroborated in

all aspects with the contents of F.I.R. charge sheet and inquest, had arrived at a conclusion that the driver of the lorry bearing No. AHH 3747 was responsible for the accident. The Tribunal disbelieved the contention that there was a contributory negligence on the part of the drivers of the auto and the lorry.

6. The undisputed fact is that the Insurance Company which has come up with the plea of contributory negligence on the part of the drivers of the auto and the lorry had not examined the driver of the lorry at least to establish that the lorry driver was not responsible exclusively for the occurrence of the accident. The Police of Suryapet Rural have registered a case against the driver of the lorry and that the evidence given by P.W.2 clearly established the fact that negligent driving of the lorry bearing No. AHH 3747 by its driver. It was clearly recited in the FIR that when the above mentioned lorry hit the auto, the above mentioned accident had taken place and such accident resulted instantaneous death of the deceased.

7. Coming to the contention of the Insurance Company that the Tribunal has erroneously made it responsible to pay the compensation to the claimants along with the owner of the lorry bearing No. AHH 3747 though the evidence given by P.W.2 clinchingly establishes the fact that ten persons were traveling in the auto at the relevant point of time of the incident is concerned, the Insurance Company has not adduced any evidence in this regard. Copy of the Insurance Policy of the offending lorry alone is marked by it. Except the production of Ex.B1-police, no other evidence is adduced by the Insurance Company to substantiate its contention that the Tribunal has made it liable wrongly. The Tribunal on close scrutiny of contents of the policy where under the Insurance Company (appellant herein) agreed to indemnify the liability on the vehicle owner in case of accidental death or bodily injuries to third parties in the road accident as may be liable to pay

compensation jointly and severally along with the vehicle owner. The Insurance Company having taken the plea that the Tribunal has wrongly made it liable to pay compensation to the claimants along with owner of the lorry bearing No.AHH 3747, has not adduced any substantial evidence supporting its contention. That the plea of traveling 10 persons in the auto may not impead the Court from making the Insurance Company liable to pay compensation when no evidence is adduced by the Insurance Company that all the 10 persons traveled in the auto have sustained injuries and they have laid the claim as against the Insurance Company.

8. On perusal of the order passed by the Tribunal, this Court has not noticed any substantial material to dissent from the view taken by the Tribunal from making Insurance Company liable to pay compensation to the respondent Nos. 1 to 5 along with the respondent No.6, owner of the lorry bearing No. AHH 3747.

9. In the light of the discussion held above, the appeal fails and the same is liable to be dismissed.

10. Accordingly, this appeal is dismissed confirming the order, dated 07-06-2005 passed by the Tribunal. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 21ST DAY OF APRIL, 2017.
Hsd