

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos. 915 AND 949 OF 2005

COMMON JUDGMENT:

Both the appeals are filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the common award passed by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Visakhapatnam (for short, 'the Tribunal') in M.O.P. Nos.1732 and 1733 of 2003, dated 30.11.2004, wherein an amount of Rs.1,98,120/- was granted in favour of the petitioners in M.O.P. No.1732 of 2003, who are respondent Nos.1 to 3 in M.A.C.M.A. No.949 of 2005; and an amount of Rs.5,67,960/- was granted in favour of the petitioners in M.O.P. No.1733 of 2003, who are respondent Nos.1 to 3 in M.A.C.M.A. No.915 of 2005.

2. Respondent Nos.1 to 3 in M.A.C.M.A. No.949 of 2005 filed M.O.P. No.1732 of 2003 before the Tribunal claiming Rs.5,00,000/- as compensation for the death of Boddeda Venkata Varaha Ravi in a motor accident occurred on 01.11.2002 at Lakshmipuram, Pendurthi, on account of rash and negligent driving of the driver of car bearing registration No.AP 31T 4775, which was owned by respondent No.4 and insured by the appellant. The claimants are the mother and sisters of the deceased in the claim petition. Whereas, respondent Nos.1 to 3 in M.A.C.M.A. No.915 of 2005 filed M.O.P. No.1733 of 2003 before the Tribunal claiming Rs.10,00,000/- as compensation for the death of Boddeda Narasimha Murthy in the same accident. The claimants are the wife and daughters of the deceased in the claim petition.

3. Heard the learned Standing Counsel for the appellant-insurer and respondent Nos.1 to 3-claimants in both the appeals. None appeared

on behalf of respondent No.4-owner of the crime vehicle in both the appeals.

4. Learned counsel appearing on behalf of the appellant-insurer contended that the compensation awarded by the Tribunal in both the claims are excessive; respondent Nos.2 and 3/claimants in both the claims were not dependents on the deceased, they were married prior to the occurrence of the accident; they are not entitled to any compensation; the driver was not possessing valid driving licence to drive the crime vehicle, i.e., car bearing No.AP 31T 4775; there is violation of terms and conditions of the insurance policy marked as Ex.B.1; an F.I.R. was issued under Section 174 Cr.P.C. and there is no legally acceptable evidence as to the involvement of the car bearing No.AP 31T 4775 in the accident and the death of Boddeda Venkata Varaha Ravi and Boddeda Narasimha Murthy in both the claim petitions; and ultimately, prayed to set aside the impugned common award passed against the appellant-insurer in both the appeals.

5. Learned counsel appearing for respondent Nos.1 to 3/claimants submitted that there is ample evidence on record to believe the involvement of car bearing No.AP 31T 4775 in the accident and also in causing death of Boddeda Venkata Varaha Ravi and Boddeda Narasimha Murthy, deceased in both the claim petitions; the Tribunal has rightly calculated compensation and awarded to respondent Nos.1 to 3/claimants in both the claims; there is no infirmity in the said award passed by the Tribunal and there are no circumstances to interfere with the impugned award; and ultimately, prayed to dismiss both the appeals.

6. To prove the involvement of the car bearing No.AP 31T 4775 in the accident, the claimants have examined P.Ws.1 to and 2 and got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of post-mortem certificate of the deceased in M.O.P. No.1732 of 2003, Ex.A.3-attested copy of post-mortem certificate of the deceased in M.O.P. No.1733 of 2003; Ex.A.4-attested copy of inquest report in respect of the deceased in M.O.P. No.1732 of 2003, Ex.A.5-attested copy of inquest report in respect of the deceased in M.O.P. No.1733 of 2003, Ex.A.6-income tax return submitted by the deceased in M.O.P. No.1733 of 2003, Ex.A.7-provisional certificate of B.V.S.Appa Rao in M.O.P. NO.1732 of 2003 and Ex.A.8-copy of the insurance policy of the crime vehicle. No witness was examined on behalf of the appellant-insurer. A copy of insurance policy of the crime vehicle was marked as Ex.B.1.

7. Ex.A.1-attested copy of F.I.R. is consisting of two papers. No report is enclosed. The averments of the report lodged with the police are not finding place in Ex.A.1-F.I.R. Learned counsel for the appellant-insurer in both the appeals contended that as per the first information, there is no involvement of crime vehicle i.e., car bearing No.AP 31T 4775 and there is no other documents to believe the involvement of the said car in the accident. Admittedly, incomplete attested copy of F.I.R. was marked in this case. No driving licence of the driver of the crime vehicle was filed. Attested copy of inquest panchanamas of both the deceased are marked in these cases. They are not sufficient to believe the involvement of the car bearing No.AP 31T 4775 in the accident. When Ex.A.1-attested copy of F.I.R. is incomplete, it is difficult to believe the involvement of the car bearing No.AP 31T 4775 in the accident. The Tribunal while marking

Ex.A.1-F.I.R. would have been careful. Without recording a clear finding with regard to the involvement of the car bearing No.AP 31T 4775 in the accident, it is not appropriate to give a finding as to whether the compensation awarded is excessive and also the entitlement of claimant Nos.2 and 3 in both the claim petitions. On this score, the impugned common award passed by the Tribunal is liable to be set aside and both the matters are liable to be remanded to the Tribunal for disposal afresh in accordance with law.

8. In the result, both the appeals are allowed, setting aside the impugned common award dated 30.11.2004 passed by the Tribunal in M.O.P. Nos.1732 and 1733 of 2003 and the matters are remanded to the Tribunal to determine the involvement of the car bearing No.AP 31T 4775 and award of compensation in favour of the claimants therein, afresh in accordance with law.

9. As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 04.08.2017

siva

Dr. SHAMEEM AKTHER, J