HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.530 of 2017

JUDGMENT:

Aggrieved by the Award dt:22.07.2004 in M.V.O.P.No.246 of 2002 passed by the Chairman, M.A.C.T-cum-District Judge, Cuddapah (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

3) The factual matrix of the case is thus:

a) The 1st claimant is the mother and claimants 2 & 3 are brother and sister of the deceased—Siva respectively. Their case is that on 06.04.1991, the deceased went to Rayalaseema Thermal Power Station at Kalamala in a lorry bearing No.ADC 2895, which was loaded with steel and after reaching there, when the lorry was taking reverse, the deceased was guiding the driver of the lorry for positioning it in correct place in order to unload the steel and at that time, the driver of the lorry drove it negligently in reverse direction on a down gradient road and lost control over the vehicle and thereby the lorry ran over the deceased causing instantaneous death. It is averred that the accident was occurred due to the fault of the driver of offending lorry. On these pleas, the claimants filed M.V.O.P.No.246 of 2002 under Sec.166 of Motor Vehicles Act, 1988 (for short "the M.V.Act") and claimed Rs.2,00,000/- as compensation against respondents 1 and 2, who are owner and insurer of the offending lorry.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2 filed counter and denied the material averments made in the petition and urged to put the claimants in strict proof of the same. R2 contended that since the place where the accident alleged to have taken place was within the premises of Thermal Power Station, which was not a public place, the Insurance Company was not liable to indemnify the liability if any of the insured. Finally R.2 contended that the compensation claimed is highly excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A5 were marked on behalf of claimants. RW1 was examined and Ex.B.1 was marked on behalf of respondents.

e) The Tribunal after considering the evidence available on record, held that the driver of the lorry was responsible for the accident and awarded compensation of Rs.1,20,000/– with proportionate costs and interest @ 9% p.a against respondent No.1 alone.

Loss of earnings	Rs. 96,000-00
Loss of estate	Rs. 15,000-00
Transport charges	Rs. 500-00
Funeral expenses	Rs. 500-00
Total	Rs.1,12,000-00

However, the Tribunal exonerated the Insurance Company agreeing with its contention that the place of accident being the premises of Rayalaseema Thermal Power Station which was not a public place and there was nothing to show that the public have any right of access to the premises.

Hence, the appeal by claimants.

4) Heard arguments of Sri D.Kodandarami Reddy, learned counsel for appellants/claimants and Sri Katta Laxmi Prasad, learned counsel for respondent No.2/Insurance Company. Case against R.1 was dismissed for default vide Court Order dated 31.12.2007.

5) Learned counsel for appellant challenged the award on two main grounds:

a) Firstly, impugning the exoneration of Insurance Company on the ground that the place of accident was not a public place, learned counsel would submit that the Tribunal misunderstood the definition of public place incorporated in Sec.2(34) of M.V.Act. Drawing the attention of this Court on the phraseology “way or other place, whether a thoroughfare or not, to which the public have a right of access”, learned counsel would submit that on a private place, if the members of the public were given right of access, which was not hitherto a thoroughfare, would assume the character of a public place within the meaning of M.V.Act and thereby the owner and insurer of the offending vehicle cannot repudiate their liability towards the victim of the accident.

He placed reliance on the following decisions:

i) ***K.Ramesh vs. B.Amarnatha and another***[1]

ii) ***Parukutty and others vs. K.P.Joseph and others***[2]

b) Secondly, challenging the quantum of compensation learned counsel would argue that the Tribunal while computing the compensation for loss of earnings of deceased, fixed his monthly earnings at a very low rate and thereby compensation was drastically reduced. It is also argued that the compensation for funeral expenses and transport charges were fixed at a low rate and therefore, compensation needs an overall spruce-up.

6 a) In oppugnation, learned counsel for 2nd respondent/Insurance Company would argue that the place of accident was admittedly the premises of Rayalaseema Thermal Power Station which was a private place and the petitioner did not produce any positive evidence showing that the public was accorded permission to enter the premises and therefore, the Tribunal rightly held that the accident spot was a private place and exonerated the Insurance Company and the said finding need not be revisited.

Alternatively he would argue, even assuming for arguments sake the accident was occurred in the public place and on that count, the Insurance Company had liability, still for another reason its liability was ceased. In expatiation, he submitted that the award in M.V.O.P.No.246 of 2002 was passed by the Tribunal on 22.07.2004 against 1st respondent, who is the

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[1] 2014 ACJ 576 (Karnataka)

[2] 2016 ACJ 704 (Kerala)

owner of the vehicle and admittedly, till now the claimants have not taken out execution of the award against the 1st respondent. Since the limitation period of 12 years was expired as against 1st respondent, no decree can now be passed against the Insurance Company as no liability is in existence against the owner to be indemnified by the Insurance Company.

b) Secondly, he argued that compensation awarded by the Tribunal was just and reasonable and there is no need to reconsider the same. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the points for determination are:

i) Whether the Tribunal was factually and legally correct in exonerating the 2nd respondent/Insurance Company on the ground that the accident occurred in a private place?

ii) Whether period of limitation to take out execution against 1st respondent is expired and on that count, no liability can be fastened on the 2nd respondent/Insurance Company?

iii) Whether compensation awarded is just and reasonable or needs reconsideration?

iv) To what relief?

8) **POINT No.1**: Section 147(1)(b)(i) of M.V.Act, refers the use of the vehicle in a public place for fastening the liability on the Insurance Company. Section 2(34) of M.V.Act defines the term public place as follows:

*"**public place**" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"*

When the above definition is analysed, two types of places can be regarded as public places. a) In the first category, it comes the public properties where public have inherent right of access without the necessity of such right being conferred by any authority. For instance, public roads, public offices and other institutions and premises where public have right to enter in the course of their business. b) In the second category, the private places where public have no access as a matter of right. However, the owner or authorized person of such private places may confer permission either express or implied to the members of the public to enter in due course of their work or for facilitating the work of the owner of the premises. By virtue of such permissive right, the private place for the purpose of M.V. Act, acquires the character of a public place. The terminology "whether a thoroughfare or not, to which the public have a right of access", refers to such private place which is not a thoroughfare for the public but acquires the character of a public place due to permissive right either express or implied. This aspect has been narrated in a number of decisions. In ***K.Ramesh***'s case(1 supra), in similar circumstances, it was held thus:

*"**<u>Para 21</u>**: Besides reading of those citations relied upon by the learned counsel for the appellant read with the definition clause enumerated in section 2(34) of the Motor Vehicles, 1988, it is clear that a public place not necessarily should be a public property, but*

> *it can also be a private property. Likewise it is also clear that a public place need not have free access; the access can also be a restricted access. What is emphasized is only with regard to the user of the premises by public. In other words, the public should have right of access to the said place whether it is permissive or otherwise.”*

Similar view was expressed in ***Parukutty***’s case also (2 supra).

a) Thus from the statute and precedential jurisprudence, it is clear that a private place may also assume the character of a public place for the purpose of this Act when the public have a right of access. Applying the above principle in the instant case, admittedly the accident was occurred in the premises of Rayalaseema Thermal Power Station which is no doubt a private place. However, the very fact that the offending lorry was permitted to enter the premises to unload the steel itself speaks that public was given right to access into the premises. The deceased met with death while the lorry was reversed. Therefore, the place of accident can be regarded as a public place for the purpose of M.V.Act. Hence the Insurance Company cannot be absolved from its liability. The Tribunal was not correct in holding that there was nothing to show that public has any right of access to the premises. It failed to notice that in fact the offending lorry was provided access to unload the steel and the deceased also came along with the lorry. Hence, the first argument of the Insurance Company is rejected. This point is accordingly answered in favour of the appellants and against respondents.

9) **<u>POINT No.2</u>**: This point is concerned, the Award was passed by the Tribunal on 22.07.2004 imposing liability against the 1st respondent alone. However, having been aggrieved by the Award, the claimants preferred appeal against both the respondents. Since the appeal was filed against 1st respondent also, the period of limitation to take out execution against him cannot be said to be commenced against him till the disposal of appeal. The record shows that the appeal was dismissed for default against 1st respondent on 31.12.2007. Therefore, if at all the period of limitation runs against him, it would be only from the dismissal of appeal against him. In such an event, the period of limitation for execution is still available to the claimants against the 1st respondent. Hence, there is no gain saying in the argument of the Insurance Company that the limitation was expired against 1st respondent. This point is accordingly answered in favour of the appellants and against the respondents.

10) **<u>POINT No.3</u>**: A perusal of the Award shows that the Tribunal for lack of proper evidence fixed the monthly earnings of the deceased as Rs.1500/- during 1991 considering him as an unskilled labourer. I find no irregularity in it. However, considering that the Tribunal awarded a low amount of Rs.500/- towards funeral expenses, the same is enhanced to **Rs.25,000/-**, having regard to the decision of the Apex Court in ***Rajesh and others vs. Rajbir Singh and others***[3]. Thus the total compensation payable to the claimants is detailed as below:

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[3] (2013) 9 SCC 54

Loss of earnings	Rs. 96,000-00
Loss of estate	Rs. 15,000-00
Transport charges	Rs. 500-00
Funeral expenses	Rs. 25,000-00
Total	Rs.1,36,500-00

Thus the compensation is enhanced by **Rs.24,500/-** (Rs.1,36,500/- minus Rs.1,12,000/-)

11) In the result, this appeal is allowed and ordered as follows:

(i) The compensation is enhanced from **Rs.1,12,000/-** to **Rs.1,36,500/-** with proportionate costs and interest at the rate of 9% per annum from the date of O.P till the date of Award and @ 7.5% per annum subsequently.

(ii) Respondents are directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.06.2017
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