

THE HON'BLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No.3045 of 2005

AND

CROSS OBJECTIONS (SR) No.15160 of 2006

COMMON JUDGMENT:

The Insurance Company has filed the M.A.C.M.A.No.3045 of 2005, whereas Cross Objections (SR) No.15160 of 2006 are filed by the claim petitioners, challenging the order, dated 17.02.2005, in Original Petition No.383 of 1999 passed by the Motor Accidents Claims Tribunal – I Additional District Judge at Khammam (for short, 'the Tribunal').

2. For the sake of convenience, parties hereinafter will be referred to petitioners and respondents as they are arrayed in O.P.No.383 of 1999.

3. Brief facts of the case are that claim the petitioner No.1 is the wife and petitioners 2 and 3 are the children of the deceased by name Azmeera Veeriya, who is a small farmer. On 31.08.1998 at about 11:00 P.M., the deceased boarded a Tipper Lorry bearing No.AP 31 T 9162 along with his vegetable load at Julurpad, and while the said tipper was proceeding towards Machinenipeta Village, one BMPS lorry bearing No.AIP 9849, which was driven by its driver in a rash and negligent manner came in its opposite direction with high speed, and dashed the tipper, in which the deceased was

proceeding along with vegetable load and as a result of it, tipper turned and the deceased Sri Azmeera Veeriya was crushed under the tipper and died on the spot. On receipt of the information about the accident, the police of Julurpad Police Station registered a case in Crime No.57 of 1998 under Sections 304-A, 338 and 337 IPC against the 1st respondent, who was the driver of the Tipper Lorry bearing No.AP 31 T 9162, and investigated the case.

4. Since the claim petitioners could not able to establish that the accident occurred due to negligent driving of the Tipper Lorry bearing No.AP 31 T 9162 by its driver, the Tribunal had recorded a finding that no cogent and legally acceptable evidence was placed by them to prove that the 1st respondent i.e., driver of the Tipper Lorry bearing No.AP 31 T 9162 was responsible for occurrence of the above mentioned accident. Though the Tribunal had given a finding that the claim petitioners could not able to establish that the accident in question had occurred due to rash and negligent driving of the Tipper Lorry bearing No.AP 31 T 9162 by its driver, awarded compensation of Rs.50,000/- under no fault liability as against the claim of Rs.2,00,000/- and made respondents Nos.1 to 3 liable to pay the said compensation amount jointly and severally.

5. Challenging the same, the National Insurance Company Ltd., has filed M.A.C.M.A.No.3045 of 2005 whereas, the claimants have filed the Cross Objections (SR) No.15160 of 2006 with the

contention that no fair or reasonable compensation is awarded to them by the Tribunal.

6. The grounds urged by the Insurance Company are precisely stated as under:

The contentions of the Insurance Company are that i) the deceased Veeraiah travelled as 'unauthorized passenger' in a goods carrying vehicle and thereby, terms and conditions of the policy were violated by the 2nd respondent i.e., owner of the Tipper Lorry bearing No.AP 31 T 9162; ii) though the evidence on record is clear and categoric so far as the violation of the terms and conditions of the policy, the tribunal has erroneously fastened the liability against Insurance Company instead of making vehicle owner alone liable to pay compensation, thus, the tribunal is at fault in making the Insurance Company liable to pay compensation to the claim petitioners along with the owner of the crime vehicle; iii) The Tribunal ought not to have fastened the liability against the Insurance Company as no evidence is coming-forth from the side of the claimants insofar as the travelling of the deceased as a goods owner in the crime vehicle.

7. The main grievance of the claim petitioners is that the Tribunal instead of awarding compensation of Rs.2,00,000/-, has restricted their claim to Rs.50,000/- considering their case under Section 140 of the Motor Vehicles Act. They contended that the

finding recorded by the Tribunal that they could not establish negligence on the part of the driver of the Tipper Lorry bearing No.AP 31 T 9162 is totally incorrect for the reason that Exs.A.1 and A.2 clinchingly establish the fact that due to the negligent driving of the Tipper Lorry bearing No.AP 31 T 9162 by its driver, instantaneous death of the deceased had taken place. The Tribunal without proper appreciation of the evidence on record, which clinchingly establishes that the deceased Veeraiah was earning Rs.5,000/- per month through coolie work and by selling vegetables etc., has awarded meagre compensation of Rs.50,000/-, which is not at all fair and reasonable; and that the order passed by the Tribunal awarding compensation of Rs.50,000/- under Section 140 of the Motor Vehicles Act payable is contrary to the evidence available in the case record. The Tribunal might have awarded compensation of Rs.2,00,000/- as claimed by them instead of dismissing the claim under Section 166 of the M.V.Act by considering Exs.A.1 and A.2 which succinctly establish the negligence on the part of the driver of the lorry, who hit the lorry to the tipper.

8. Heard both sides.

9. The Tribunal relying on the evidence of wife of the deceased, who was examined as PW.1, and the supporting documents and evidence viz., the First Information Report and charge sheet, where

it was clearly mentioned that while the deceased was travelling in the crime vehicle along with vegetables to take them in Kothagudem market for the purpose of selling, the accident in question had taken place, had made the Insurance Company liable to pay compensation along with the vehicle owner. The above finding recorded by the Tribunal cannot be found fault as it was recorded on appreciation of the evidence of PW.1, whose evidence was corroborated by Exs.P.1 and P.2, wherein it was clearly recited that while the deceased was travelling along with vegetables in the crime vehicle, the accident in question had taken place.

10. The witness examined by the Insurance Company was not the eye witness to the occurrence that he had no knowledge about the manner in which the accident occurred. RW.1 has no knowledge in what capacity the deceased travelled in the crime vehicle. The evidence of PW.1 is clear and categoric insofar as the deceased proceeding towards Kothagudem market along with the vegetables at relevant point of time. The above finding recorded by the Tribunal on factual aspect, cannot be disturbed. This Court finds no substantial material to set aside the award passed by the Tribunal whereby compensation of Rs.50,000/- is awarded under 'no fault liability' because of failure of the petitioners to establish that the accident in question has taken place only on account of the negligent driving of the Tipper Lorry bearing No. AP 31 T 9162 by

the 1st respondent –driver of the crime vehicle. PW.1 is not the eye witness to the accident. On overall appreciation of the evidence available in the case record, the Tribunal has rightly held that the Insurance Company cannot be exonerated from its liability to pay compensation to the claimants. This Court has not noticed any substantial on valid grounds to take a different view insofar as fastening of liability as against the Insurance Company.

11. Coming to the cross objections raised by the claimants, the Tribunal on appreciation of entire evidence on record, has awarded compensation of Rs.50,000/- considering the case of the claimants under 'no fault liability'. Since establishment of negligence on the part of driver of the offending vehicle is the primary requirement to be fulfilled by the claimants to claim compensation under Section 166 of the M.V. Act, the tribunal has taken the right view by awarding compensation under 'no fault liability'. As the petitioners have failed to make the case under Section 166 of the M.V. Act by establishing negligence on the part of driver of the offending vehicle. This Court finds that there is no illegality or irregularity in the order passed by the tribunal in granting compensation to the petitioners under 'no fault liability'.

12. In the light of the finding recorded above, this Court holds that no valid grounds are made out by the appellant to get the order dated 17.02.2005 set aside. The appeal filed by the Insurance

Company, and the cross objections filed by the claimants are liable to be dismissed and they are dismissed without costs.

The Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE J.UMA DEVI

Date: 07.04.2017
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