

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.399 OF 2007

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellants, who are the petitioners in M.V.O.P. No.1150 of 2003 on the file of the Chairperson, Motor Vehicles Accidents Claims Tribunal-cum-VIII Additional District Judge, Guntur (for short, 'the Tribunal'), aggrieved by the order dated 05.10.2006, whereby the Tribunal while granting compensation of Rs.1,19,500/-, against the original claim of Rs.2,00,000/-, laid under Sections 163-A, 166 and 140 of the Act for the death of Bathini Yogaiah (deceased) in a motor accident occurred on 01.06.2003, tagged the liability only against the 1st respondent-owner and dismissed the claim against the 2nd respondent-insurer of the tractor and trailer bearing registration Nos.AP 7X 6800 and AP 7X 6801 (for short, 'the crime vehicle').

2. Heard the learned counsel for the appellants-petitioners, learned Standing Counsel for the 2nd respondent-insurer and perused the material available on record. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default on 05.07.2016.

3. The case of the petitioners, in brief, is that on 01.06.2003, at about 10-40 p.m., when the deceased was travelling by the crime vehicle along with 25 bags of Brinjals, after hiring the same from Vemuluripadu village to Guntur, the driver of the crime vehicle drove the same at high speed and lost control over the same at the turning; as a result of which, the crime vehicle turned turtle opposite Hindu College, Guntur; Bathini Yogaiah, who suffered severe injuries all over his body, succumbed to the injuries on the spot and other inmates of the crime vehicle also sustained injuries. Immediately, the body of the deceased was shifted to Government

General Hospital, Guntur for conducting post-mortem examination. Subsequently, the accident was registered as a case in Crime No.87 of 2003 of Kothapet Law and Order Police Station for the offences under Sections 304-A, 337 and 338 of I.P.C. The deceased was aged 55 years, earning an amount of Rs.5,000/- p.m. by doing his own cultivation besides sale of vegetables in wholesale to the vegetable market, Guntur. Hence, the petitioners, being the legal heirs of the deceased, who lost their sole bread-winner, claimed compensation of Rs.2,00,000/- against the respondents.

4. Respondent No.1-owner of the crime vehicle remained *ex parte* before the Tribunal.

5. Respondent No.2-insurer of the crime vehicle filed counter, before the Tribunal, denying all the averments mentioned in the claim petition and contended that the crime vehicle was meant only for agricultural purpose, but the same was used for commercial purpose, at the time of the accident, and as such no person is authorised to travel by the crime vehicle except the driver; the seating capacity is also only for one person *i.e.*, driver; the insurance policy of the crime vehicle covers the insurance of only driver and the persons travelling by the crime vehicle, other than driver, are not covered under the insurance policy; and ultimately, prayed to dismiss the claim petition.

6. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, R.Ws.1 and 2, and the documents Exs.A.1 to A.6 and Exs.B.1 to B.5, awarded the compensation of Rs.1,19,500/- only against the 1st respondent-owner and dismissed the claim against the 2nd respondent-insurer *vide* order dated 05.10.2006, holding that when carriage of any person, other than the driver, is not permitted, the question

of coverage of insurance policy to the owner of the goods or an authorised representative of the owner of the goods, travelling by the crime vehicle, does not arise. Aggrieved by the said order, the present Appeal is preferred by the appellants.

7. Learned counsel for the appellants submits that the Tribunal, in all, has granted a compensation of Rs.1,19,500/-, against the original claim of Rs.2,00,000/-, which is unjust and quite un-reasonable; prior to the accident, the deceased was aged 55 years, hale and healthy, earning Rs.5,000/- by doing own cultivation in addition to selling the vegetables on wholesale to the Vegetable Market, Guntur. The Tribunal failed to assess the damages caused to the petitioners and granted a meager compensation against their claim. Further, there is no violation of terms and conditions of insurance policies Exs.B-1 and B-2. The deceased used the crime vehicle as owner of the goods and, hence, the petitioners are entitled for compensation. To substantiate the case of the petitioners, P.Ws.1 and 2 were examined and Exs.A-1 to A-6 were marked on their behalf; on behalf of the 2nd respondent-insurer, R.Ws.1 and 2 were examined and Exs.B-1 to B-5 were marked and while dealing with the subject matter of the Appeal, the Tribunal has framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of Tractor bearing No.AP 7X 6800 and Trailer No.AP 7X 6801?
2. To what compensation the petitioners are entitled and from whom?
3. To what relief?

8. The Tribunal has analyzed the entire evidence on record and held that there was rash and negligent driving on the part of the driver of crime

vehicle and granted a compensation of Rs.1,19,500/- against the 1st respondent-owner and dismissed the claim against the 2nd respondent-insurer.

9. Now the point for determination is, whether the appellants are entitled for enhancement of compensation and whether both the respondents are jointly and severally liable to pay the compensation?

10. **POINT:** The evidence of P.Ws.1 and 2 and the documents marked such as Ex.A-1 – certified copy of F.I.R, Ex.A-2 – certified copy of charge sheet, Ex.A-3 – certified copy of post-mortem report, Ex.A-4 – certified copy of inquest report, Ex.A-5 – certified copy of observation report and Ex.A-6 – certified copy of M.V.I. report, clearly establish and prove that the deceased succumbed to the injuries due to rash and negligent driving of the driver of crime vehicle, which finding cannot be disturbed.

11. There is no dispute with regard to travel of the deceased by the crime vehicle and his instantaneous death in the accident. The specific evidence of P.W.1, wife of the deceased, is that the deceased was aged 55 years, doing agriculture, and earning Rs.5,000/- p.m. However, the Tribunal has taken the annual income of the deceased as Rs.15,000/- and deducted 1/3rd, towards his personal expenses, though his family members are 5 in number, and applied the relevant multiplier '11', applicable to the age group of deceased i.e., 51 to 55 years, relying on the decision of the Apex Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**¹, in arriving at Rs.1,10,000/- towards loss of dependency, Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral

¹ 2009 (6) SCC 121

expenses; in all, granted a compensation of Rs.1,19,500/- with interest at the rate of 6% p.a. from the date of petition till deposit.

12. Admittedly, the accident occurred on 01.06.2003; there is no record to believe that the deceased was earning an amount of Rs.5,000/- p.m. by doing cultivation. Therefore, award of compensation of Rs.1,10,000/- towards loss of dependency is quite reasonable and this finding need not be disturbed. However, the Tribunal has granted Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses, which are meager and they are enhanced to Rs.10,000/- under each head, respectively.

13. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court, if any
01.	Loss of dependency	Rs.1,10,000/-	Rs.1,10,000/-
02.	Loss of consortium	Rs.5,000/-	Rs.10,000/-
03.	Loss of estate	Rs.2,500/-	Rs.10,000/-
04.	Funeral expenses	Rs.2,000/-	Rs.10,000/-
TOTAL		Rs.1,19,500/-	Rs.1,40,000/-

14. Now, coming to the aspect of deciding the joint and several liability of the respondents, admittedly, the deceased traveled by the crime vehicle. As per Exs.B-1 and B-2, insurance policies of the crime vehicle, seating capacity of the tractor is one person *i.e.*, for the driver. There is no evidence to prove that the deceased was owner of the goods at the time of accident. As per Exs.B-1 and B-2, there is no coverage of insurance to other persons such as coolies and labourers except the driver of the crime vehicle.

15. The Tribunal had examined the decisions of the Apex Court reported in ***National Insurance Company Limited Vs. Baljit Kaur and others***², ***National Insurance Company Limited Vs. Swaran Singh and others***³, ***New India Assurance Company Limited Vs. Voika Marrubai and others***⁴ and ***Oriental Insurance Company Limited Vs. Pushpa and others***⁵, relied on by learned counsel for the petitioners, and a decision of this Court reported in ***Vachala and others Vs. V.V.R. Kumar and another***⁶, relied on by learned counsel for the 2nd respondent, to conclude that the 1st respondent-owner of the crime vehicle alone is liable to pay the compensation and not the 2nd respondent-insurer. At this stage, it is also appropriate to rely on the decisions of the Apex Court in ***New India Assurance Company Limited Vs. Asha Rani and others***⁷, ***National Insurance Company Limited Vs. Bommithi Subbayamma and others***⁸ and ***National Insurance Company Limited Vs. Savitri Devi and others***⁹, wherein the Apex Court had an occasion to held that no liability can be tagged against the insurer of the crime vehicle, it is only the owner who has to pay the compensation to the claimants-petitioners. Hence, in view of the facts and circumstances and the decisions referred supra, it can be safely concluded that there is no infirmity in the order of the Tribunal with regard to violation of terms and conditions of the insurance policies; no liability can be tagged against the 2nd respondent-insurer; the Tribunal has rightly dismissed the claim against the 2nd respondent-insurer and directed the 1st respondent-owner to pay the compensation, which is sustainable.

² 2004 ACJ 428

³ 2004 ACJ 1

⁴ 2000 ACJ 647

⁵ 2005 ACJ 578

⁶ 2004 (5) ALD 30 (AP)

⁷ 2003 (2) SCC 223

⁸ 2005 ACJ 721

⁹ 2013 (11) SCC 554

16. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.1,19,500/- to Rs.1,40,000/-, modifying the rate of interest, awarded by the Tribunal, from 6% p.a. to 7.5% p.a. relying on the decision of the Apex Court in ***Dharam Pal and others Vs. U.P. State Road Transport Corporation***¹⁰. On deposit, the appellants-petitioners are entitled to withdraw the entire compensation. Further, the appellants-petitioners are entitled for equal share in the enhanced compensation. The other conditions imposed by the Tribunal remain un-changed.

17. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Date: 26.07.2017.
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Dr. SHAMEEM AKTHER, J



¹⁰ AIR 2008 SC 2312

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