

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2156 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the National Insurance Company Limited, represented by its Branch Manager, Branch Office, Khammam, who is respondent No.3 in M.A.T.O.P. No.737 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Khammam (for short, 'the Tribunal'), aggrieved by the award dated 29.04.2005, whereby the Tribunal granted compensation of Rs.2,39,900/- in favour of the claimants-respondent Nos.1 to 5 herein against the appellant, driver and owner of the crime vehicle-respondent Nos.6 and 7 herein, for the death of Bompalli Sreenu (deceased) in a motor accident occurred on 25.10.1999. Respondent Nos.1 to 5 herein are the wife, children and mother of the deceased.

2. Heard the learned Standing Counsel for the appellant-insurer. There is no representation on behalf of respondent Nos.1 to 5-claimants. It is endorsed in the cause title of the grounds of appeal that respondent No.6 herein-driver of the crime vehicle is not necessary party to this appeal. The appeal against respondent No.7-owner of the crime vehicle is dismissed on 04.01.2012 for default.

3. The parties hereinafter are referred to as they were arrayed before the Tribunal.

4. Learned Standing Counsel for the appellant-insurer would contend that the driver of the jeep bearing No.AP 31H 5515 did not cause accident; the Tribunal dealing with the subject matter of the crime in this

case acquitted respondent No.1-the driver of the jeep bearing No.AP 31H 5515 in the said proceedings; none of the witnesses deposed that the jeep bearing No.AP 31H 5515, causing the accident and it was driven by the accused therein; respondent No.1-driver of the jeep was examined as R.W.2; there is specific evidence of R.W.2 that he was falsely implicated in this case; respondent No.3-insurer has also relied on the judgment in C.C. No.187 of 2000 before the Judicial Magistrate of the First Class, Khammam, acquitting respondent No.1-driver of the jeep; the Tribunal did not appreciate all the facts and circumstances of the case and erroneously tagged liability on respondent No.3-insurer; and ultimately, prayed to dismiss the claim against respondent No.3-insurer.

5. There is no assistance from the side of the claimants. However, the points that have come up for consideration are:

(1) Whether the deceased-Bompalli Sreenu died due to the rash and negligent driving of the driver of the jeep bearing No.AP 31H 5515?

(2) Whether the impugned award is liable to be set aside by allowing the appeal?

6. **POINTS:** To substantiate the case of the petitioners, petitioner No.1 deposed as P.W.1 and got examined P.W.2-K.Narasaiah and got marked Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of the charge sheet, Ex.A.3-certified copy of post-mortem examination report and Ex.A.4-certified copy of the M.V. Inspector's report. On behalf of respondent No.3-insurer, its employee was examined as R.W.1 and the driver of the jeep bearing No.AP 31H 5515 who is respondent No.1 was examined as R.W.2 and got marked Ex.B.1-certified copy of judgment in

C.C. No.187 of 2000 on the file of the Judicial Magistrate of the First Class, Khammam and Ex.B.2-certified copy of insurance policy of the crime vehicle. The evidence of P.Ws.1 and 2 is that when the deceased and P.W.2 were walking on foot on completing their coolie work, they were hit by a jeep bearing No.AP 31H 5515 driven by respondent No.1 in a rash and negligent manner and due to the said accident, the deceased succumbed to injuries. Ex.A.1-certified copy of F.I.R. and Ex.A.2-certified copy of charge sheet reveal the same. The contention of respondent No.3-insurer is that there is specific evidence of R.W.2-driver of the jeep that the jeep did not cause the accident. There is also specific mention in Ex.B.1-certified copy of judgment in C.C. No.187 of 2000 on the file of Judicial Magistrate of First Class, Khammam, the driver of the jeep was acquitted in that case. There is also evidence of R.W.2 to that effect. There is also other evidence to believe that the jeep bearing No.AP 31H 5515 did not cause the accident and death of the deceased. As per the evidence of P.Ws.1 and 2 that the driver of the jeep bearing No.AP 31H 5515 caused the accident. In Ex.A.1-certified copy of F.I.R. also, there is specific mention of the driver of the jeep causing the accident resulting in death of the deceased. The same is also finding place in Ex.A.2-certified copy of charge sheet. Ex.A.3-certified copy of post-mortem examination report reveals the multiple injuries which are possible in the motor accident. The judgment of the Criminal Court is not binding on the Motor Accidents Claims Tribunal. The Tribunal has to independently analyse the evidence and give its finding with regard to the involvement of subject jeep, the accident and the driver of the jeep, etc. The Tribunal, relying on the evidence of P.Ws.1 and 2 and the documents mentioned above, i.e.,

Exs.A.1 to A.4, had given a finding that the deceased-Bompalli Sreenu died due to the rash and negligent driving of the driver of the jeep bearing No.AP 31H 5515. P.W.2 is an eyewitness to the accident. In Ex.A.2-certified copy of charge sheet also, the name of P.W.2 is figuring as eyewitness. Ex.A.4 is the Motor Vehicles Inspector's report, where the number of the jeep and name of the driver of the jeep are mentioned. If all the contentions of respondent No.3-insurer are correct that the jeep did not cause the accident, the jeep number could not have been found in Ex.A.1-F.I.R., Ex.A.2-charge sheet and Ex.A.4-M.V.Inspector's report. As the driver of the jeep is acquitted in the criminal case, it cannot be held that the jeep did not cause the accident. R.Ws.1 and 2 are interested persons. Their testimony cannot be given weightage and relied on. It is contended that the Motor Vehicles Inspector's report was prepared after 20 days after the accident. It will not disable the case of the claimants, as there is evidence on record to substantiate the case of the claimants. It is also appropriate to state that while granting compensation of Rs.2,39,900/- with interest at 9% per annum, the Tribunal had taken the monthly income of the deceased as Rs.1,800/-, deducted 1/3rd therefrom, applied suitable multiplier '16' and granted compensation. It is just and reasonable. Therefore, all contentions raised on behalf of respondent No.3-insurer do not merit for consideration. There is no infirmity in the order passed by the Tribunal. Accordingly, the impugned order passed by the Tribunal is liable to be confirmed. Both the points are answered accordingly.

7. In the result, this appeal is dismissed confirming the award and decree dated 29.04.2005 passed by the Tribunal in M.A.T.O.P. No.737 of 2000. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, shall also stand dismissed.

Date: 23.10.2017
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Dr. SHAMEEM AKTHER, J

