

HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1629 OF 2006

JUDGMENT:

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 O.P. No.629 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur, (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.2,10,000/- with interest at the rate of 6% per annum from the date of petition till realization granted by the Tribunal, vide the order dated 13.04.2006, for the death of one Konda Venkateswarlu (hereinafter referred 'the deceased') in a motor accident occurred on 16.06.2003. The appellants are the wife, children and the mother, of the deceased.

The facts of the case, in brief, are that on 15.06.2003, the deceased along with three others boarded a tractor at Srikakulam Village of Krishna District, after purchase of the fodder they were proceeding towards their Village Returipalli in Guntur District, at about 5.30 a.m. on 16.06.2003 when the tractor reached near Enekapadu Village in Krishna District, lorry bearing No.HR 38-G-8699 driven by its driver in a rash and negligent manner, dashed the above tractor-trailer from the rear, due to which the tractor was completely damaged and the deceased fell on the road and that the tyre of the lorry ran over the deceased, thereby he died on the spot. Therefore, the appellants claimed compensation for Rs.2,10,000/- against the respondents, who are the owner and insurer of the vehicle.

Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal. Respondent No.2, insurer of the vehicle, filed counter denying the averments made in the petition and pleaded that the driver of the crime vehicle did not possess valid driving licence at the time of accident, which is in violation of the conditions of the policy.

The Tribunal, after considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.5 on behalf of the appellants and the evidence of R.W.1 and Ex.B.1 marked on behalf of the respondents, determined compensation as Rs.2,10,000/- against the first respondent and granted the same with interest at the rate of 6% per annum from the date of petition till realization.

The appeal against respondent No.1-owner was dismissed on 30.06.2016 for default. However, dismissal of the appeal for default against the respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it was held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot

¹ 2001(1) ALT 495 (D.B.)

be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

Heard the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record.

Learned counsel for the petitioner would submit that the tribunal, after going into the merits of the case, awarded an amount of Rs.2,10,000/- with interest @ 6% P.A. against the first respondent, and absolved the second respondent from its liability, since there is no valid insurance to the crime vehicle.

Learned counsel for the second respondent drawn the attention of this court to the findings recorded by the tribunal, wherein the tribunal concluded that the crime vehicle was not insured with the second respondent and the claim against the first respondent was dismissed.

On perusal of entire material record, i.e., the evidence of R.W.1 coupled with Exs.B.1, B.2 and B.4 and Ex.A.4 - MVI report, it is clear that by the date of accident, the crime lorry was not insured with the second respondent, and there is no iota of evidence produced by the appellants to disprove the evidence of the second respondent. Hence, the tribunal holding that the appellants are not entitled to get compensation from the second

respondent and awarded compensation Rs.2,10,000/- against the first respondent is just and reasonable. This court finds no reason to interfere with the findings recorded by the tribunal and hence the appeal is liable to be dismissed.

In the result, the appeal is dismissed. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 27.01.2017
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