

HON'BLE Dr.JUSTICE SHAMEEM AKTHER

MACMA No.408 of 2007

JUDGMENT:

Heard learned counsel for the appellant-insurance company. There is no representation on behalf of the 1st respondent/claimant. The claim against respondent No.2 – owner of the vehicle has been dismissed for default vide order dated 05.07.2016. The dismissal of claim against owner of the vehicle is not a bar to adjudicate this appeal on merits in view of the decision in **Meka Chakra Rao v. Yelubandi Rama Rao**¹. Hence, this appeal is being disposed of by this judgment.

2. Learned counsel for the appellant would submit that the deceased N.Chennamma was traveling by the tractor bearing No.AP.22T.5271 and trailer bearing No.AP.22T.5272 on 16.06.1999, met with an accident and died. The tractor is required to be used for agricultural purpose only and it is not a goods transport vehicle. Though there is insurance policy to the tractor, the travel of the deceased had not been covered therein. The Tribunal has erroneously tagged the liability against the appellant herein. The Tribunal has granted higher compensation, i.e. Rs.80,000/- and awarded the same in favour of the sole claimant. There are no merits in the claim petition filed by the claimant. The Tribunal ought not to have granted any relief against the appellant herein and ultimately prayed to set aside the award and decree under appeal.

3. The material placed on record reveals that on 16.06.1999 evening, the deceased N.Chennamma loaded vegetables into the tractor-trailer bearing

¹ 2001 (1) ALD 453

Nos.AP.22T.5271 and AP.22T.5272 respectively and said to have paid hire charges to the driver. There were some other persons in the tractor transporting goods. While the deceased was traveling in the tractor-trailer, it met with an accident and the deceased died as a result of the same. To substantiate the same, there is oral evidence of P.W.1 and documentary evidence under Ex.A.2, certified copy of PME Report, Ex.A.3, certified copy of MVI Report and Ex.A.4, certified copy of charge sheet. All these documents clearly establish that the deceased was traveling with vegetables on the tractor-trailer bearing Nos.AP.22T.5271 and AP.22T.5272. The Tribunal has rightly assessed compensation at Rs.80,000/-. In view of the oral and documentary evidence referred above, it can be safely concluded that there was rash and negligent driving on the part of the driver of the tractor-trailer, resulting in the death of the deceased N.Chennamma. What is required to be determined in this appeal is whether the appellant-insurer can be made liable to pay compensation as directed by the Tribunal. Admittedly, the deceased was traveling on the tractor-trailer along with vegetables. The tractor is required to be used only for agricultural purpose. Ex.B.1 is the copy of the policy of the insurance of the said tractor, which is valid on the date of the accident. But, as per the terms and conditions of the policy, a person with goods such as vegetables, etc., is not covered therein. At this juncture, it is apposite to refer the decisions rendered by the Hon'ble Supreme Court in **Manager, National Insurance Company Limited, v. Saju P. Paul and another**², **National Insurance Co. Ltd. v. Cholleti Bharatamma**³ and **National Insurance Company Limited v. Kaushalaya Devi and others**⁴.

² [(2013) 2 SCC 41] (DB)

³ [(2008) 1 SCC 423] 9 (DB)

⁴ [(2008) 8 SCC 426] (DB)

4. In view of the facts and circumstances of the case and the decisions referred supra, no liability can be tagged to the appellant-insurer of the tractor-trailer involved in the accident. Even a direction to the appellant to pay the compensation and recover the same from the owner of the tractor-trailer cannot be given. Therefore, the claim against the appellant/insurer is liable to be dismissed. However, as per the order dated 09.03.2007 passed in this appeal, appellant has deposited 50% of the compensation awarded by the Tribunal. It is brought to the notice of the Court by the learned counsel for the appellant that the said amount was withdrawn by the claimant. In view of the same, appellant/insurer shall not recover the said amount from the respondent/claimant, but he shall recover the same from the owner of the tractor-trailer.

5. In the result, the impugned order dated 10.11.2006 passed in O.P.No.1039 of 1999 by the Tribunal is modified dismissing the claim against the appellant-insurer. The appeal is accordingly disposed of. No order as to costs.

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

Dr.SHAMEEM AKTHER, J

June 16, 2017
MRR