

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A No. 564 of 2010

JUDGMENT:

This appeal is arising out of the order dated 03.07.2009 in O.P.No.522 of 2003 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge-FTC-I), at Khammam (for short, 'the Tribunal').

2. Brief facts of the case are that on 24.12.2002, the deceased, after attending to coolie work, was proceeding in the tractor bearing No.AP-27D-2467 and trailer bearing No.AP-27D-2468 after loading stones at Kampelly in order to unload the same at Khammam and when the tractor reached near Pallegudem-M. Venkatayapalem road, at about 6.00 PM, the driver drove the tractor at a high speed for overtaking an auto and, in the process, lost control over the tractor and trailer. As a result, the tractor and trailer turned turtle and the deceased fell down and the stone load fell on him resulting in the death of the deceased. Alleging that the accident occurred solely due to the rash and negligent driving of the driver of the crime tractor, the claimants filed O.P.No.522 of 2003 before the Tribunal seeking compensation of Rs.2,00,000/- against respondents 1 and 2, who are the owner and insurer, respectively, of the crime tractor.

Respondent No.1-owner remained exparte. Respondent No.2-Insurer filed its counter denying the averments in the claim petition.

Based on the pleadings, the Tribunal framed the following three issues:

- (i) *Whether the accident took place due to rash and negligent driving of accident vehicle bearing No.AP-27D-2467?*
- (ii) *Whether the petitioners are entitled to claim compensation? If so, to what amount and from which of the respondents?*
- (iii) *To what relief?*

On behalf of the claimants, PWs.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the respondent-Insurance company, RW1 was examined and Ex.B1-copy of policy was marked.

The Tribunal, on consideration of the oral and documentary evidence available on record, allowed the petition by awarding Rs.4,08,000/- with interest at 7.5% per annum, and costs. Aggrieved by the same, the Insurance company filed the present appeal.

3. Heard Smt. J.K. Anitha, advocate representing Sri B. Devanand, learned counsel for the appellant; and Smt. Vanga Anitha, learned counsel for claimants-respondents 1 and 2.

4. Learned counsel for the appellant submitted that the deceased traveled in a tractor trailer as a labourer and no premium was paid to cover the risk of any labourer. Placing reliance on paragraph 9 of the judgment of this Court in **New India Assurance Co. Ltd., v. Palamoni Suresh and another**¹, she submits that the deceased was a labourer and he traveled in the crime tractor as a gratuitous passenger,

¹ 2013 ACJ 194

and the deceased is not a third party for coverage of risk under the Act policy, as such there is no liability for the insurance company.

Paragraph 9 of **Palamoni Suresh (1 supra)** reads as under:

“9. In the instant case, it is not the pleaded case of the claimant that the vehicle, which caused the accident, is covered by a comprehensive policy and unless the risk of gratuitous passengers is also covered over and above what is envisaged by the Act policy, such passengers are not covered by the policy and a fortiori, the review petitioner is not liable to pay compensation for the risk of a gratuitous passenger such as respondent No.1”

5. Learned counsel for the appellant further submits that the Act policy does not cover the risk of a person traveling in a tractor trailer unless an extra premium is paid, and since it is not a comprehensive policy or a package policy or an additional premium is paid for coverage of risk of a person who is traveling on the vehicle, his risk is not covered.

6. Learned counsel for the respondent, placing reliance on the evidence of PW1, submits that the deceased was traveling in the vehicle as a coolie working on the vehicle for the purpose of loading and unloading of stones. Therefore, the deceased died in the course of his employment, and hence, the owner of the vehicle is liable to pay compensation on account of the death of the deceased.

7. A perusal of the evidence of PW1 reveals that the deceased attended to coolie work on the crime tractor and he was traveling in

the tractor after loading the stones at Kampelly for unloading the same at Khammam, and when the tractor reached Pallegudem-M. Venkatayapalem road, the driver drove the tractor at a high speed and lost control of the vehicle and it resulted in the death of the deceased.

8. It is pertinent to note that no extra premium is paid for coverage of risk of the deceased. Admittedly, the insurance policy of the crime tractor is an Act policy which covers the risk of a third party. Since the policy is not a comprehensive policy or package policy or no additional premium is paid, there is no liability for the insurance company to pay compensation for the death of the deceased who was working on the crime tractor.

9. In view of the foregoing reasons, the Award passed by the Tribunal is modified to the extent of fixing the liability on the owner of the crime tractor for payment of compensation to the respondents-claimants, and exonerating the liability on the insurance company. If any compensation amount has already been deposited by the insurance company and withdrawn by the respondents-claimants, the insurance company shall recover the same from the owner of the crime tractor.

10. The appeal is, accordingly, is disposed of. No costs. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE G.SHYAM PRASAD

09th February, 2017
KSM

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