

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3300 OF 2004

JUDGMENT:

The present appeal is preferred by respondent No.2 - M/s. New India Assurance Company Limited in O.P. No.501 of 1997 on the file of the Chairman, Principal Motor Accidents Claims Tribunal - cum - District Judge, Nellore (for short 'Tribunal') questioning the liability fastened on respondent Nos.1 and 2, who are owner and insurer of Lorry bearing registration No.AP 16T 4316 driven by its driver in a rash and negligent manner, in which deceased - Venkata Narasaiah was sitting, and hit the Tipper bearing registration No.BR 17B 6111 on the date of accident, resulting the death of deceased.

2. The Tribunal by its order, dated 29.10.2002, in O.P. No.501 of 1997, held that owner and insurer of the lorry are liable to pay the compensation having elaborately dealt with the fact-situation under issue No.1 and dismissed the claim against owner and insurer of the Tipper, respondent Nos.3 and 4.

3. Respondent No.10 and the appellant herein are respondent Nos.1 and 2, who are owner and insurer of the aforesaid lorry respectively, in O.P. No.501 of 1997 before the Tribunal, while respondent Nos.11 and 12, who are owner and insurer of the tipper, respectively, are arrayed as respondent Nos.3 and 4, and respondent Nos.1 to 9 are the petitioners.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in O.P. before the Tribunal.

5. Heard Sri Kota Subba Rao, learned standing counsel for the appellant - respondent No.2, Sri M.V.S. Sai Kumar, learned standing counsel for respondent No.12 herein, and Sri M. Venkata Narayana, learned counsel for respondent Nos.1 to 9. The appeal against respondent No.10 and 11, who are owners of lorry and tipper, respectively, was dismissed for default on 13.04.2016.

6. The main submission of the learned standing counsel for the appellant is, that PW.2's evidence would show that he, according to the petitioners' case, was an eye-witness to the occurrence, and that the deceased was traveling in the lorry, in which case, he must be construed as an employee of the lorry owner, respondent No.1. However, he also pointed out fairly that the charge sheet averments shows that the deceased was actually traveling in the tipper. The Tribunal arriving at the finding that due to rash and negligent driving of the lorry driver, the accident had occurred and ruled out any question of 'head-on-collision' nor negligence that could be attributed to the driver of the tipper. Even the documentary evidence through Exs.A-1 and A-2 would also point out distinctly that the lorry driver was driving the vehicle in a rash and negligent manner, and when he was negotiating a speed breaker, has hit the tipper. Therefore, it cannot be said that driver of both the vehicles were negligent, nor

could contributory negligence be viewed when the Tribunal recorded a positive finding holding own negligence on the part of the lorry driver. Therefore, the submission of the learned counsel for the appellant has no merit.

7. The other submission made by the learned standing counsel is, that the Tribunal awarded interest at 9% per annum. The learned standing counsel pleads to reduce the interest in view of the judgment of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹. But, unfortunately, somehow, the said plea was not agitated in the grounds of appeal. When no ground is raised in the grounds of appeal, certainly, the appellant is not allowed to now contend that rate of interest awarded by the Tribunal is exorbitant. Hence, there is no merit in the appeal.

8. The appeal is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 29, 2017.
Mgr

¹. 2013 ACJ 1403