HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.86 OF 2004

JUDGMENT:

The present appeal is preferred by the appellants challenging the order and decree, dated 05.05.2003, in M.V.O.P. No.126 of 2003, by the Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Kurnool at Nandyal (for short 'Tribunal'), whereby and where-under, for the death of Balija Yeruva Bala Gurreppa, an amount of Rs.2,00,000/- was granted which was also the claim made by the legal representatives under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short 'Act'), but exonerated the Insurance Company, which is respondent No.2 herein on the ground that the Tractor and Trailer was a goods vehicle and the deceased was travelling on it as a passenger as the evidence on record would establish that on the date of accident, he went to work as a coolie in the field of one Kanala Pedda Narasimhlu, and after completion of the work at 5.00 p.m., he was returning on the accident tractor and died when it met with an accident.

2. The appellants herein are petitioners in the foresaid MVOP, while respondent Nos.1 and 2, who are owner and insurer of Tractor and Trailer bearing registration Nos.AP 26C 6049 and 6050, respectively, are respondents as such.

3. For the sake of convenience, the parties hereinafter referred to as they were originally arrayed in the aforesaid MVOP.

4. Heard Sri A. Jaya Sankara Reddy, learned counsel for the appellants - petitioners. No representation for respondent No.2 - Insurer.

5. The learned counsel for the petitioners though, made an attempt to impress upon this Court that the deceased was actually working as a Hamali/Coolie on the accident vehicle, but, certainly, that submission of the learned counsel would run contra to the evidence on record let in by the petitioners themselves. In paragraph No.12, there has been lengthy discussion made by the Tribunal referring to the contents of Exs.A-1 and A-3 and the evidence of PW.1. Exs.A-1 and A-2, which are certified copies of First Information Report and Charge Sheet would reflect that on 19.12.2000, the deceased went to the field of Ediga Kanala Pedda Narasimulu for coolie work and after completion of that day's job, he was returning by sitting on the tractor bearing No.AP 26C 6049 and met with the accident. The Tribunal has also made a pertinent observation that the petitioners have moulded the petition in such a way to project the deceased as Hamali by designing in that manner after initiation of prosecution against the driver of the tractor and, therefore, disbelieved the stand taken by the legal representatives i.e., petitioners. The Tribunal did not agree with the submission made by

the learned counsel for the petitioner, placing reliance on a decision in **New India Assurance Ltd., v. Asha Rani and others**[1] arrived at the conclusion that no liability can be fastened on Insurer and only owner is responsible for payment of compensation determined by it.

6. When examined Exs.A-1 and A-3, the contents thereof would clearly reflect what has been observed by the Tribunal, so also the evidence of PWs.1 and 2 where they attempted to mould the case as well as their evidence, in such a way to project the deceased as Hamali on tractor and trailer which completely contradicts the contents of Exs.A-1 and A-3. Therefore, certainly, that finding exonerating the Insurance Company from payment of compensation by way of indemnifying respondent No.1 in the aforesaid MVOP does not suffer from any legal infirmity warranting interference.

7. So far as the quantum of compensation is concerned, the Tribunal worked it out at Rs.2,40,000/- as against Rs.2,00,000/- and restricted it to Rs.2,00,000/-. In that regard, certainly, the petitioners are entitled to Rs.2,40,000/-, but from the owner of the vehicle only as awarding just compensation is the object of the Legislation and the settled law is that when the amount determined towards compensation exceeds the claim, there cannot be any embargo to grant the amount determined without restricting it to the amount claimed.

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[1]. 2002 (4) Decisions Today (SC) 71

8. Therefore, to the extent of modifying the order and decree passed by the Tribunal holding that the petitioners are entitled to Rs.2,40,000/- with interest at 9% per annum, and the order and decree in all other respects are confirmed. The appellants - petitioners shall pay Court fee on the excess amount of Rs.40,000/- within three months from the date of receipt of a copy of the order before the Tribunal.

The appeal is, accordingly, allowed. 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 10, 2017.
Mgr