THE HON'BLE SMT.JUSTICE ANIS

C.M.A No.2851 of 2004

JUDGMENT:

This appeal is filed by the appellant/National Insurance Company under Section 173 of the Motor Vehicles, 1988 ( for short "the Act") aggrieved by the award dated 07-01-2002, passed by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Anantapur in O.P.No.469 of 1996 awarding compensation of Rs.1,28,872/-.

2. The claimants filed the above O.P under Section 140 and 166 of the Act claiming compensation of Rs.1,50,000/- on account of death of one B.Nagesh (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. The brief averments made in the petition are that on 30-09-1996 at 1.30 P.M when the deceased went to Penukonda for taking an electric motor for welding purpose and after attending the repair works, boarded a Van bearing No.AP-02/T. 6323 to go to Chennekothapalli village. The driver of the Van drove the vehicle in a rash and negligent manner and lost control over the Van, resulting which the Van turned turtled, due to which the deceased fell down and succumbed to injuries in Government Hospital, Anantapur. According to the

petitioners, the accident occurred only due to the rash and negligent driving of the Van driver. Police registered a case in Cr.No.38/1996 under Sections.337, 338 and 304-A IPC against the driver of the Van. The petitioners who are the dependants of deceased filed the claim petition claiming compensation of Rs.1,50,000/-.

4. Respondent Nos.1 and 2 remained *ex parte* before the Tribunal; whereas 3rd respondent-National Insurance Company filed a counter.

5. The brief averments made in the counter filed by the 3rd respondent before the Tribunal are as follows:-

The respondent put the petitioners to prove the manner of accident, age and income of the deceased. The 3rd respondent contended that the driver of the Van has no valid driving licence and the Van was not having valid permit. The 3rd respondent further contended that the compensation awarded by the Tribunal is high and excessive and finally prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim of the petitioners Pws.1 and 2 were examined and Exs.A-1 to A-4 got marked. On behalf of the 3rd respondent RW.1 was examined and got marked Ex.B-1.

7. The Tribunal, after considering the oral and documentary evidence, having held that the accident was caused due to rash and negligent driving of the driver of the Van, awarded compensation of Rs.1,28,872/- with proportionate costs and subsequent interest @ 6% p.a. from the date of award till date of realization against respondent Nos.1 to 3, directing to deposit the same into the court within 2 months from the date of award.

8. Aggrieved by the order of the Tribunal, the Insurance Company filed the present Appeal.

9. The learned Standing Counsel for the appellant/Insurance Company argued that the driver of the Van was not having valid driving licence and the vehicle was not having valid permit on the date of accident and there is no negligence on the part of the driver of the Van and finally argued that compensation claimed by the petitioners is high and excessive.

10. On the other hand, the learned counsel for the petitioners/claimants argued that the compensation awarded by the Tribunal is just and reasonable and petitioners, who are dependants of the deceased, entitled to claim the said amount.

11. Having regard to the submissions made by both learned counsel, the point that arises for consideration is:-

> Whether the appellant/3rd respondent has made out any case to set aside the award passed by the Tribunal?

<u>14.POINT</u>:-

There is no dispute that the accident occurred due to rash and negligent driving of the Van bearing No. No.AP-02/T. 6323 by its driver in which the deceased was traveling as a passenger and due to the rash driving of the Van, it turned turtle, as a result of which, the deceased died. The Tribunal, after considering the oral and documentary evidence, awarded a just and reasonable compensation of Rs.1,28,872/- to the claimants.

The only contention raised by the Appellant/Insurance Company is that the driver of the Van was not having valid driving licnce and the vehicle was not having valid permit to ply the vehicle on the date of accident. It is no doubt true that only because of the accident the deceased died and claimants are only dependents of deceased. In my considered view the Tribunal has rightly held that all the respondents are liable for payment of compensation to the claimants. Since the owner of the vehicle is also liable for payment of compensation, as rightly held by the Tribunal, the appellant/Insurance Company is entitled to recover the said amount from the owner of the vehicle. Therefore, the law is now settled that the Insurance Company has to pay the entire compensation to the petitioners in the first instance and recover the same from the owner of the Van by initiating appropriate proceedings before the Executing Court, without filing a separate suit.

12. With the above observation, the Appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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ANIS,J

14-06-2017
TSNR