HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.874 of 2010

JUDGMENT:

This appeal is filed by the appellant/United India Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') aggrieved by the order and decree dated 19.02.2010 passed by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Anantapuramu in O.P.No.168 of 2008.

2. The appellant herein is the 2nd respondent in O.P.No.168 of 2008 filed under Sections 140 and 166 of the Act claiming compensation of Rs.2,00,000/- on account of death of G.Venkateswarlu in a motor vehicle accident occurred on 03.02.2007 at Anantapuramu.

3. For the sake of convenience, the parties hereinafter will be referred to as they arrayed before the Tribunal.

4. The case of the appellant is that the deceased while traveling in a lorry bearing No.AP 21 V 7758 as a cooli met with an accident and due to rash and negligent driving of the vehicle, the deceased fell down from the lorry and sustained injuries and died in the accident. The Tribunal awarded compensation of Rs.1,81,000/- with interest at 7.5% per annum as against the claim of the petitioners of Rs.2,00,000/-.

5. The points that arise for consideration are:-

(i) Whether the deceased traveled as a gratuitous passenger in a goods vehicle?

(ii) Whether the petitioner traveled as the owner of buffaloes and bulls as forest agent?

6. Heard Smt.A.Malathi, learned counsel for the petitioner/appellant and Sri G.Venkata Reddy, learned counsel representing Sri K.Ratangapani Reddy, learned counsel for the respondents.

7. Learned counsel for the appellant submits that the deceased was traveled in the lorry as a gratuitous passenger. He is no way concerned with the goods carried in the lorry. He was not an authorized agent of the goods. There is evidence on record to show that the deceased traveled by sitting on the top of the lorry which is in violation of Section 123 of the Act. The said provision reads as follows:

> "123. Riding on running board etc.,:
>
> (1) No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.
>
> (2) No person shall travel on the running board or on the top or on the bonnet of a motor vehicle."

8. It is further submitted that the Tribunal has examined two witnesses on behalf of the petitioners. P.W.1 G.Anjamma is wife of the deceased and she was not an eye witness to the accident. P.W.2 Shaik Babjan is a direct eye witness to the accident. He was traveling in the offending lorry at the time

of accident. PW2 stated in his cross-examination that the bulls carried in the lorry did not belong to them and Venkateswarlu was sitting on the top of the cabin.

9. Learned counsel for the appellant submits that the Tribunal though discussed about the testimony of PW2 in respect of rash and negligent act committed by the driver of the lorry, the cross-examination of the witness is not considered. He placed reliance on the cross-examination of PW2 and submits that the deceased Venkateswarlu traveled by sitting on the top of the cabin, which is in violation of Section 123 of the Act. Therefore, there is breach of conditions of policy. It is also submitted that the bulls do not belong either to PW2 or Venkateswarlu traveled in the crime vehicle. This clearly shows that the deceased traveled in the crime vehicle as a gratuitous passenger. The insurance company is not liable to pay in case of gratuitous passenger.

10. The Tribunal placed reliance on 161 Cr.P.C. statement recorded by the police and basing on the said statement, the Tribunal came to the conclusion that the deceased was commission agent for sale of cattle. The lorry was transporting bulls. Some persons sat in the cabin and others sat in the lorry. Placing reliance on 161 Cr.P.C. statements of the witnesses, the Tribunal came to the conclusion that the deceased doing business in selling cattle and he was traveling in the lorry as a passenger in connection with the bulls being

transported in the lorry. Therefore, it is considered that the deceased traveled as an owner of goods or authorized agent of goods.

11. The findings of the Tribunal were based on 161 Cr.P.C. statements recorded by the police. The persons who gave those statements were not brought to the Court to give evidence. On the other hand, PW2 who gave evidence was the person who traveled in the lorry at the time of accident. The Tribunal has ignored the cross-examination of this witness, which reads as under:-

> "About 7 or 8 persons were traveling in the lorry along with bulls. The bulls belong to Venugopal, Sivareddy and Venkatanarasaiah. Myself and Venkateswarlu were doing commission business. The bulls do not belong to me and Venkateswarlu. Venkateswarlu was sitting on the top of the cabin. The police examined me about the accident. It is not true to suggest that the accident took place due to the negligence of the deceased and there was no fault on the part of the lorry driver."

The Tribunal has not given any finding on this evidence and it was literally brushed aside by the Tribunal.

12. The evidence of PW2 clearly reveals that the deceased was traveling by sitting on the top of the cabin. It is further revealed that the deceased was not the owner of the goods. Therefore, the contention of the insurance company that the deceased traveled in the lorry as a gratuitous is proved.

13. Therefore, the evidence of the Tribunal that the deceased traveled as an owner of goods is not proved and the contention of the insurer that there is breach of policy conditions is proved.

14. Learned counsel for the appellant submits that the trial Court has given a direction to deposit half of the amount awarded before the Tribunal and the legal representatives of the deceased were permitted to withdraw Rs.25,000/-.

15. In view of the facts and circumstances of the case, since the accident is pertaining to the year 2007 and the claimants have already permitted to withdraw Rs.25,000/- and half of the decretal amount as ordered to be deposited by the insurance company, this Court is not inclined to entertain with the finding that whatever amount was deposited by the insurance company at the first instance is ordered to be recovered from the owner of the vehicle. The liability of the insurance company is exonerated except for the purpose of recovering the amount.

16. In the result, the appeal is partly allowed. The amounts, if any deposited by the Insurance Company before the Tribunal, shall be recovered from the owner of the crime vehicle since the liability of the insurance company is exonerated.

The Miscellaneous Petitions, if any, pending in this MACMA shall stand closed.

G.SHYAM PRASAD,J

Date : .02.2017.
ssp