THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 967 of 2010

JUDGMENT:

This appeal is arising out of the order dated 12.10.2009 in M.O.P.No.605 of 2007 on the file of II Additional District Judge-cum-Motor Accidents Claims Tribunal, (FTC), Parvatipuram (for short, 'the Tribunal').

2. Brief facts of the case are that on 03.05.2006 while the deceased-Vennela Varun Kumar, a 6 year old boy, was going in a tractor bearing No.AP-16Y-0430 as a labourer, the driver of the tractor drove it in a rash and negligent manner, at a high speed, due to which the tractor met with an accident by falling into the ground well. As a result, the deceased died on the spot. The police registered a case in Crime No.33 of 2006 for the offences punishable under Sections 304A and 279 of IPC. Claiming compensation of Rs.1,50,000/- on account of the death of their son the claimants filed the claim petition against respondents 1 and 2, who are the owner and insurer, of the offending tractor.

3. The owner of the offending tractor remained *ex parte*. The Insurer filed counter denying the allegations in the claim petition. The Tribunal, on consideration of the evidence, awarded compensation of Rs.1,50,000/-. Aggrieved by the award of compensation, the Insurance company filed this appeal.

4. Heard Sri Kota Subba Rao, learned counsel for the Insurance company, and Smt. Yashoda, learned counsel representing Sri Venkateswara Rao Gudapati, learned counsel for the claimants.

5. Learned counsel for the appellant-Insurance company mainly contended that the claimants have taken a plea before the Tribunal that the deceased who was a 6 year old minor boy, was traveling on the offending tractor in the capacity of labourer. He submits that the offending tractor is for agricultural purposes and the insurance policy covers risk of only one person who is the driver of the tractor and there is no extra premium paid to cover the risk of other passengers. Learned counsel also contended that the driver of the offending tractor has no valid driving licence to drive the tractor and, therefore, there is violation of terms and conditions of the insurance policy and hence the Insurance company is not liable to pay any compensation to the claimants.

6. Learned counsel for the respondents-claimants submits that the deceased was not traveling on the offending tractor in the capacity of labourer. She submits that, as per the evidence of PW1-mother of the deceased, the deceased was studying LKG, that due to rash and negligent driving by the driver of the tractor, the accident has occurred, and he died due to the injuries in the accident.

7. With regard to the contention of the Insurance company the driver of the offending tractor has no valid driving licence, the Tribunal held that the burden of proof is on the Insurance company to prove that the driver was not having valid driving licence to drive the offending vehicle. The Tribunal rightly came to the conclusion that the Insurance company did not adduce any evidence by examining the officials of the RTA to prove that the driver had no valid driving licence at the time of accident. Therefore, I do not see any valid grounds to interfere with the observation

of the Tribunal in holding that the insurance company could not prove that the driver of the offending tractor has no valid driving licence.

8. It is obvious that the deceased was a minor boy aged 6 years, and he was studying LKG. No doubt, the insurance policy was in force by the date of accident but the deceased, who was a minor boy of 6 years age, cannot be considered as a labourer and, therefore, it is obvious that he was traveling on the tractor as an unauthorized passenger. When there is no coverage of risk for other passengers, the insurance company is not liable to pay compensation for the death of deceased who traveled as an unauthorized passenger.

9. In the result, the appeal is partly allowed, exonerating the liability on the insurance company. However, since half of the compensation amount awarded by the Tribunal has already been deposited by the Insurance company, the same may be recovered from the 3rd respondent-owner of the tractor, as per the procedure contemplated under law. The claimants are permitted to withdraw the deposited amount as per their proportionate shares fixed by the Tribunal. No costs. Pending miscellaneous petitions, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

02nd March, 2017
KSM

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