

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.379 OF 2011

JUDGMENT:

Appellant-Insurance Company filed this appeal against the award and decree dated 26.07.2008 passed in O.P.No.8/2005 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram, granting compensation of Rs.3,00,000/- as against the claim of Rs.3,00,000/- to the respondents-claimants for the death of the deceased P.Simhachalam in the motor vehicle accident occurred on 07.11.2004.

Brief facts of the case are that the respondents-claimants, who are the wife and minor sons of the deceased respectively, filed claim petition under Section 163-A of the Motor Vehicles Act alleging that on 07.11.2004 the deceased along with other labourers boarded the lorry bearing No.AP 31 V 7578 after loading the sand at Venupally and started for unloading the same. When the lorry reached near Chilakalagedda at about 9.45 p.m. the driver of the lorry drove the same in a rash and negligent manner and applied sudden breaks due to which the deceased fell from the lorry and died. Ananthagiri Police registered a case in crime No.63 of 2004 for the offence punishable under Section 304A of Indian Penal Code. It was further alleged that the deceased was earning Rs.80/- per day by working as a labourer. Thus, they claimed compensation of Rs.3 lakhs from respondents 1 to 3, who were the driver, owner and insurer of the offending lorry.

The driver and owner of the offending lorry remained *ex parte* before the Tribunal.

The appellant-Insurance Company filed a counter affidavit before the Tribunal contending that as the travel of the deceased in the offending lorry was in contravention of the provisions of the M.V.Act and as no extra premium was paid by the owner of the offending lorry to cover the risk of labourers, who were engaged for loading and unloading purpose, the Insurance Company was not liable to pay compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident occurred due to the rash and negligent driving of driver of lorry bearing No.AP 31 V 7578?
- 2) Whether the petitioners are entitled to any compensation, if so, from which of the respondents?
- 3) To what relief?

On behalf of the claimants, PW-1 was examined and Exs.A.1 to A.5 were got marked. On behalf of the appellant-Insurance Company, RWs 1 and 2 were got examined and Exs.B.1 to B.3 were got marked.

The Tribunal based on the evidence of PW.1-wife of the deceased and Ex.A.1-FIR, Ex.A.2-Post Mortem Report, Ex.A.3-MVI Report and Ex.A.4-charge sheet, held that the driver of the offending lorry was responsible for the accident in which the deceased died and thereby answered issue No.1 in favour of the claimants.

Further, considering the evidence of P.W.1, who deposed that her deceased husband used to earn Rs.80/- per day and in

the absence of any contrary evidence, the Tribunal has taken the annual income of the deceased as Rs.28,800/- (Rs.80 X 30 X 12). After deducting 1/3rd therefrom towards personal expenses of the deceased and applying the multiplier '17', the Tribunal arrived the loss of dependency at Rs.3,26,000/-. The Tribunal held that, in addition, the claimants were also entitled for Rs.2,000/- towards funeral expenses, the first claimant was entitled for Rs.5,000/- towards loss of consortium and claimants 2 and 3 were entitled for Rs.2,500/- towards loss of estate and in all the claimants were entitled for Rs.3,35,500/- towards compensation. However, as the claim of the claimants before the Tribunal was only for Rs.3,00,000/- the Tribunal restricted the claim and granted Rs.3,00,000/- towards compensation along with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization payable by the appellant and respondents 4 and 5 jointly and severally.

Smt.SAV Ratnam, learned counsel for the appellant-Insurance Company, would contend that the owner of the offending lorry has not paid any additional premium covering the risk of coolies in the vehicle. The policy is 'A' Policy i.e. Act policy and it covers the risk of third parties only. Hence, the appellant is not liable to pay any compensation to the claimants. She would further contend that the quantum of compensation granted by the Tribunal is also excessive.

Per contra, Sri A.Sai Narayana Rao, learned counsel for the respondents-claimants, would contend that the Tribunal has rightly fixed the income of the deceased at Rs.80/- per day, which

cannot be said to be on higher side. He would further contend that though the Tribunal held that the claimants were entitled for the compensation of Rs.3,35,500/- restricted the same to Rs.3,00,000/- and the same is against the judgment of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***¹ wherein it was held that the compensation granted could be over and above the claim.

As seen from Ex.B.1-Policy, the appellant collected Rs.3,500/- towards third party basic premium and Ex.A.5-Schedule applicable to the present policy.

Relevant portion of Ex.A.5 reads as under:

Section II – Liability to Third parties:

1. Subject to the limits of liability as laid down in the schedule hereto the company will indemnify the insured against all sums including claimant's cost and expenses when the insured shall become legally liable to pay in respect of
 - (i) Death or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor vehicle.
 - (ii) Damage to property caused by the use (including the loading and for unloading) of the Motor vehicle

From the above, it is clear that the liability arising out of death or bodily injury of any person arising out of the use of the motor vehicle including the loading or unloading, shall be indemnified by the insured. Even R.W.1 admitted that Ex.A.5 Schedule applies to Ex.B.1 Policy. Therefore, the case of the deceased squarely falls under the above provisions.

¹ (2003) 2 SCC 274

For the above reasons, the appeal is liable to be dismissed and is accordingly dismissed.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

16.11.2018
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