

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.NO.673 OF 2012

JUDGMENT:

This appeal is arising out of the judgment and decree dated 11.09.2009 in MVOP.No.423 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati.

The appellant, who is M/s. Reliance General Insurance Co. Ltd., is respondent No.2, respondents 1 to 3 herein are the petitioners and respondent No.4 is the owner of the tractor and trailer bearing No.AP-03-W-3901 and 3915 in MVOP.No.423 of 2007 filed under Section 116(1) of the Motor Vehicles Act, 1988, claiming compensation of Rs.4 lakhs and subsequently, enhanced to Rs.5 lakhs on account of death of the deceased by name A.Muruga Reddy.

The brief facts of the claim petition are that on 18.05.2007, the first respondent's driver and the deceased, being a coolie, went to quarry for the purpose of loading sand and the first respondent's driver parked the vehicle at a dangerous spot for loading of sand and after loading the sand and while the deceased was climbing the offending vehicle, the edge of the sand fell on the deceased and caused instantaneous death. It is alleged that on account of negligent parking of the vehicle by the first respondent's driver, the accident has occurred. The Station House Officer of Tiruchanur Police Station registered a case in Crime No.83 of 2007 under Section 304-A of the Indian Penal

Code and filed charge sheet before the III Additional Judicial Magistrate of First Class, Tirupati.

The first respondent was set *ex parte* and the second respondent has filed written statement contending that the driver of the first respondent was not holding valid driving license and the tractor was kept at proper place and it was not at a dangerous place and the tractor was not in a moving condition and there was no negligence on the part of the driver of the first respondent. It is further contended that negligence on the part of the owner of the quarry and the non-joinder of the owner of the quarry is fatal to the case and hence, sought for dismissal of the claim petition. The Tribunal, on consideration of the evidence of the witnesses, P.Ws.1 to 3 and documents, Exs.A1 to A4 and R.W.1 on behalf of the respondents, has allowed the claim petition awarding compensation of Rs.4,20,000/- with proportionate costs and with subsequent interest at 6% per annum against the respondents 1 and 2, the owner and the insurer.

Aggrieved by the impugned judgment, the insurer has preferred this appeal mainly on two grounds.

Learned counsel for the appellant argued that there is composite negligence on the part of the driver of the crime vehicle and also the deceased and that the tractor was not in the moving condition and therefore, there is no negligence on the part of the driver of the crime vehicle.

Learned counsel for the appellant mainly submitted that the vehicle involved in the accident was parked and while loading the sand, the accident has occurred and therefore, the insurer is

not liable. It is further submitted that while the deceased was climbing the offending vehicle, the edge of the sand fell on deceased and therefore, there is no negligence on the part of the driver of the vehicle. It is pertinent to note that the vehicle is said to have been parked in a dangerous place and therefore, there is negligence on the part of the driver of the crime vehicle in parking at such a place which resulted in the accident. The Tribunal has taken a correct view in this regard and therefore, there are no grounds to interfere with the findings of the Tribunal to come to a conclusion that there is composite negligence on the part of the driver of the crime vehicle and also the deceased.

Learned counsel for the appellant submitted that the driver of the crime vehicle is not possessing valid driving license. He was possessing a non-transport license which is not valid and the vehicle involved is a transport vehicle. In the light of the decision rendered by the Supreme Court in the case of **S.Iyyapan v. United India Insurance Company Limited and another¹**, possessing of non-transport license and driving transport vehicle does not absolve the liability of the insurance company. In the light of the decision rendered in **S.Iyyapan¹**, I see no merit in this contention. In view of the foregoing reasons, there are no merits in the appeal. Therefore, the appeal is liable to be dismissed.

In the result, the appeal is dismissed. The award passed by the Tribunal is confirmed. The appellant is directed to deposit the balance of compensation amount within one month from the date of receipt of a copy of this order. On such deposit, the

¹ (2013)7 SCC 62

respondent is permitted to withdraw the amount as fixed by the Tribunal. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(GUDISEVA SHYAM PRASAD, J)

23rd February 2018
RRB

