

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1874 of 2010

JUDGMENT :

The appellant/Respondent No.2/Insurance Company aggrieved by the Award dated 13.4.2009 in O.P. No.557 of 2007 on the file of the Motor Accidents Claims Tribunal/V Additional District Judge, Ananthapur, preferred this appeal on the ground that the Tribunal erred in not holding that the driver of the tractor was not holding valid and effective driving licence and making the Insurance Company liable.

2. The claim of the respondents 1 to 3/claimants is that on 2.7.2007 at about 4.15 PM when the deceased Munaiah stopped his motorcycle on the left side of the road near the stone crushing factory at Bugga road to meet his brother-in-law, at that time, the tractor bearing No.AP 02 G 8784 came in rash and negligent manner and dashed the deceased, who died on the spot.

At the time of accident, the deceased was 44 years old, hale and healthy and by doing *borugulu* business used to earn Rs.5,000/- per month and spend the entire amount for the family.

3. Respondents 1 and 3 who are respondents 4 and 5 herein were set *ex parte*.

4. Respondent No.2/Insurance Company filed the written statement and additional written statement. His contention is that the petition is bad for non-joinder of Kullayappa, who stated to be the

owner of the tractor in the F.I.R., as he is necessary party. Unless C.Mallikarjuna Reddy, the 1st respondent, has insurable interest in the Tractor, the 2nd respondent/appellant is not liable to pay the compensation. There was neither rashness nor negligence on the part of the driver of the Tractor bearing No.AP 02 G 8784 at the time of accident. The mishap occurred only due to the negligence of the deceased Jollu Munaiah, who was riding on his motorcycle without caring for vehicular traffic on the road. The further contention is that petitioners have to prove that they are the only legal heirs and there are no other legal representatives to the deceased.

In the additional written statement it is contended that the 3rd respondent was added after the commencement of the trial, so that will not rectify the latent defect in the O.P., as such petitioners are not entitled for a decree.

5. The Tribunal, having considered the pleadings of the claim petition, written statement and additional written statement, settled the following issues for trial :

1. Whether the accident occurred due to rash and negligent act of the driver of the tractor bearing No.AP 02 G 8784 and caused the death of the deceased or not?
2. Whether the petitioners are entitled to any compensation, if so to what amount and from which of the respondent?
3. To what relief?

6. In support of the claim, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. No oral or documentary evidence was adduced by respondents.

7. Now, the point that arises for determination is :

“Whether the award is suffering from any legal infirmities warranting interference?”

8. The sole contention of the appellant is that the Tribunal erred in not holding that the driver of the tractor at the time of the accident was not having any valid and effective driving licence.

9. At this juncture it is better to mention that this claim petition was filed under Section 163-A of the Motor Vehicles Act by petitioners, who are wife, son and mother of the deceased Jollu Munaiah respectively. In an application under Section 163-A of the Motor Vehicles Act, there is no necessity to prove rash and negligence, but it is sufficient if the claimants could establish the age, occupation and income of the deceased at the time of the accident/death.

10. Though there is no need to establish rash and negligence, in view of the contention of the appellant/respondent No.2 before the Tribunal that there is no negligence on the part of the driver of the offending tractor bearing No.AP 02 G 8784 and the negligence is only on the part of the deceased himself, the claimants examined T.Venkataiah, direct and eyewitness to the accident. In the chief evidence affidavit he stated that on 2.7.2007 at 4.15 PM while the deceased was coming on his motorcycle from Jammalamadugu village to Yadiki at Bugga Road, near the stone crushing factory, Munaiah stopped his motorcycle on the left side of the road to meet his brother-in-law and P.W.2, then the tractor came in rash and negligent manner and dashed against the deceased. During

cross-examination P.W.2 clarified that on the date of accident himself and his friend by name Basha were coming on the motorcycle from Yadiki to Thadipatri and when they reached Bugga road, the deceased met them and at that time the crime tractor came in rash and negligent manner and dashed against the deceased. P.W.2 denied the suggestion that he never witnessed the accident and deposing falsely.

11. On a perusal of Ex.A1 - F.I.R. and Ex.A4 - charge-sheet, it is evident that P.W.2 himself is the complainant who is cited as first witness in the charge-sheet - Ex.A4. P.W.1, wife of the deceased, is not an eyewitness to the accident, therefore, though a finding is not necessary with regard to rash and negligent manner, the Tribunal, having considered the evidence of P.Ws.1 and 2 and Exs.A1 and A4, opinion of the inquestdars in Ex.A2 - Inquest Report and in the absence of any rebuttal evidence adduced by the 2nd respondent/appellant, came to the conclusion that the accident occurred due to rash and negligence of the driver of the tractor bearing No.AP 02 G 8784.

12. The only contention of the appellant is that the driver does not possess valid and effective driving licence at the time of the accident.

13. In the entire written statement and additional written statement there is no plea that the driver of the offending tractor does not possess valid and effective driving licence. For the first time in the appeal he took the plea that the driver does not possess valid and effective driving licence. The contention for the first time in the appeal

without a plea and issue before the Tribunal is untenable, more so, the respondents did not adduce any oral or documentary evidence to establish that the driver of the tractor does not possess any valid and effective driving licence. In the absence of any such plea and issue, I am of the considered view that the Tribunal is right in not giving any finding with regard to the contention of the appellant that the driver does not possess valid and effective driving licence.

14. Having regard to the plea before the Tribunal that petition is bad for non-joinder of Kullayappa, I am of the opinion that basing on the plea of the appellant herein in the written statement that the petition is bad for non-joinder of Kullayappa, subsequently, claimants added him as third respondent. By adding him as 3rd respondent claimants complied with the objection. Therefore, this plea is now not available to the appellant. Further, the evidence of P.W.1 well established that P.W.1 is wife, petitioners 2 and 3 are daughter and mother of the deceased Munaiah respectively and except them there are no other dependents on the deceased Munaiah. Therefore, they are only dependents and legal heirs of the deceased Munaiah.

15. The consistent evidence of P.Ws.1 and 2 is that the deceased used to do *borugulu* business and used to earn Rs.5,000/- per month on business. In the absence of any documents showing the age, income and occupation of the deceased Munaiah, basing on the evidence of P.Ws.1 and 2, the Tribunal considered the age as mentioned in PME certificate under Ex.A3 and inquest report under Ex.A2 as 45 years. The Tribunal on average took the income of the deceased in between Rs.70/- to Rs.80/- per day and monthly income

at Rs.2,550/- and arrived the annual income of the deceased at Rs.20,400/-, which is less than the maximum income prescribed for, and the Tribunal also deducted 1/3rd towards personal expenses of the deceased had he been alive and applied multiplier '15' as per the 2nd schedule and awarded a total compensation of Rs.3,15,500/-. The appellant is not disputing the compensation awarded by the Tribunal.

16. In the facts and circumstances discussed above and findings therein, I am of the considered view that the Tribunal is perfectly valid in not giving any finding on the fact that the driver of the crime vehicle does not possess any valid and effective licence, since there is no plea or issue before the tribunal. The findings and conclusions arrived by the Tribunal and the awarding of total compensation of Rs.3,15,500/- with interest at the rate of 7.5% per annum with proportionate costs from the date of petition till the date of realisation against respondents 1 to 3 jointly and severally is legal, valid and do not suffer from any legal infirmities warranting interference in the appeal.

17. In the result, the appeal is dismissed in toto with costs, while confirming the Award dated 13.4.2009 in O.P. No.557 of 2007 on the file of the Motor Accidents Claims Tribunal/V Additional District Judge, Ananthapur. The appellant and respondents 4 and 5 are directed to deposit the compensation amount and interest after deducting the amount, if any, already paid or deposited within 45 days from the date of receipt of a copy of the judgment. On such deposit,

claimants are permitted to withdraw their apportioned amounts as ordered in M.V.O.P.

18. Advocate fee is fixed at Rs.2,000/-.

19. Consequently, miscellaneous petitions pending, if any, shall stand closed.

19th March, 2018

JUSTICE N.BALAYOGI

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