

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1908 OF 2010

JUDGMENT:

Against the order, dated 26.08.2010 passed in M.O.P.No.207 of 2008 by the Chairman, Motor Accident Claims Tribunal (Family Court-cum-Additional District and Sessions Court, Vizianagaram) (for brevity 'the Tribunal'), the present appeal is filed by IFFCO TOKIO General Insurance Company Limited, which has been arrayed as 3rd respondent in the above mentioned O.P.

2. The factual background of the case is briefly stated as follows:

Respondents 1 and 2 herein are parents of the deceased, Ijjada Seetharamnaidu @ Seetharam, who died in the accident on 03.01.2007. They have laid the claim for Rs.3,50,000/- against the driver, owner and insurer of the Tractor bearing No. AP 20T 6435-cum-Trailor bearing No. AP 7U 1605 in respect of death of their son Seetharam in the road accident dated 03.01.2007.

3. It has been asserted by the respondents 1 and 2 in their pleadings that on 03.01.2007 while their son Seetharam and another were returning to Mettavalasa quarry after unloading the stones at Arikathota village from the Tractor bearing No.AP 20T 6435-cum-Trailor bearing No. AP 7U 1605, when they reached near Surabattula Mandmadha's thrashing floor, the said tractor was driven in a rash and negligent manner by its driver and as the result of it, the deceased who was standing on the middle bar of the tractor fell down, and the wheels of the Tractor bearing No. AP 20T 6435-cum-Trailor bearing No. AP 7U 1605 ran over him and it resulted his instantaneous death. Respondents 1 and 2 further asserted that their deceased

son was aged 20 years by the date of his death and he was hale and healthy prior to his death. He was getting income of Rs.100/- per day by attending coolie work. Due to sudden demise of their son, they lost bread winner of their family, therefore they laid the claim against the driver, owner and insurer of Tractor bearing No. AP 20T 6435-cum-Trailor bearing No. AP 7U 1605, due to negligent driving of which, the death of the deceased took place.

4. The driver and owner of the offending tractor did not choose to contest the O.P. filed by the respondents 1 and 2 herein. The Insurance Company alone contested the O.P.. In the Counter filed by the Insurance Company, it was asserted that the tractor involved in the accident was not holding proper permit, fitness certificate etc., and that the driver who drove it at the relevant point of time was also not possessing valid driving licence. It was its further contention that the terms and conditions of the policy of the tractor were violated by the vehicle owner by allowing 1st respondent who did not possess licence to drive tractor, hence it cannot be held liable to pay compensation to the claimants.

5. The claimants in the above mentioned O.P. to prove their case, examined P.Ws. 1 and 2. P.W.1 was the father of the deceased and P.W.2 was the eye-witness to the accident. Apart from examining P.Ws. 1 and 2, they produced Exs.A1 to A4 documents in support of their contentions.

6. The trial Court on close scrutiny of the evidence on record, came to the conclusion that the driver of the Tractor bearing No. AP 20T 6435-cum-Trailor bearing No. AP 7U 1605 was responsible for causing of accident, which resulted the instantaneous death of the deceased. The Court

below relied on the evidence of P.W.1 regarding income of the deceased and that it awarded compensation of Rs.3,03,000/- to the claimants. It applied multiplier 16 taking into consideration the age of the mother of the deceased. The Insurance Company having been aggrieved by the award passed by the Court below making it liable to pay compensation along with driver and owner of the offending tractor, came before this Court by preferring the present appeal.

7. The contentions raised by the appellant-Insurance Company are precisely stated as follows:

The first and foremost contention of the Insurance Company is that the Court below ought to have held that the death of the deceased took place on account of his own negligence as he was standing on the bar connected to the Tractor bearing No. AP 20T 6435-cum-Trailor bearing No. AP 7U 1605 at the relevant point of time. The Court below instead of holding that the deceased himself was negligent and he was responsible for occurrence of the death etc., found that the driver of the tractor was at fault and due to the negligent driving of the tractor by him, the accident in question took place and the said finding arrived by the Court below is contrary to the evidence on record.

The second contention of the Insurance Company is that the terms and conditions of the policy of the tractor are breached by the 2nd respondent who handed over his tractor to a person, who does not possess licence to drive the tractor. The evidence given by R.W.2 in this regard is not properly appreciated by the Court below and thus, it can be held that the Court below has erred in fastening the liability as against the Insurance Company.

The third contention of the Insurance Company is that income of the deceased is fixed by the Court below at Rs.100/- per day without any basis. Since no evidence is adduced by the claimants to prove the income of the deceased, the learned trial Judge ought to have taken the income of the deceased at Rs.15,000/- per annum as per second schedule of the M.V. Act.

Since these being the prime contentions raised by the counsel for the Insurance Company while making his submissions, the evidence on record needs to be re-appreciated.

8. The claimants have got examined P.W.2, Vandarasi Kannam Naidu to prove that the accident which resulted the death of the deceased, was caused by the driver of the Tractor bearing No. AP 20T 6435-cum-Trailor bearing No. AP 7U 1605. It was deposed by P.W.2 that the deceased was engaged as a labourer to unload the stones from the tractor. While himself and the deceased were returning back to quarry after unloading stones at Arikathota village, the tractor was driven by the 1st respondent in a rash and negligent manner, and as the result of it, the deceased fell down and died on the spot. On the complaint given by P.W.2 to the police, criminal case was registered against the driver of the tractor under Section 304-A IPC and was investigated into.

9. The claimants themselves asserted in their pleading that the deceased was standing on the middle bar connecting the trailor to the Tractor bearing No. AP 20T 6435 at the relevant point of time. Travelling of the deceased in such way on the bar connecting the trailor to the tractor would indicate negligence on his part also. As he contributed

for the accident, negligence ought to have been apportioned in between the tractor driver and the deceased. Though this fact was borne by the record, the Court below had not taken it to consideration. In my view, the Court below ought to have apportioned the negligence in the ratio of 75:25 percent as against the driver of the tractor and the deceased who traveled by standing on a bar connecting trailer to the tractor.

10. Coming to the issue relating to fastening of the liability as against the Insurance Company is concerned, it is consistently contended by the Insurance Company that terms and conditions of the policy are breached by the vehicle owner by handing over his Tractor bearing No. AP 20T 6435-cum-Trailor bearing No. AP 7U 1605 to a person, who does not possess licence to drive the tractor. It is evident from the deposition of R.W.2 that 1st respondent, the driver of the tractor was authorized to drive heavy goods vehicle.

11. It is not the case of the Insurance Company that 1st respondent had no licence at all. It raised the contention that no specific endorsement was obtained by the 1st respondent from the authorities concerned authorizing him to drive a tractor and the persons who possessed licence to drive heavy motor vehicle were not supposed to drive a tractor, which was a light motor vehicle. Normally, a licence to drive heavy motor vehicle will be issued to a licensee after he is issued with a licence to drive a light motor vehicle. The Court below on close scrutiny of evidence of R.W.2 and the other material on record came to the opinion that the terms and conditions of the policy were not breached by the 2nd respondent (the owner of the offending tractor).

12. It is borne by record that the deceased at the relevant point of time was traveling in the tractor as a labourer. As the terms and conditions of the policy obtained by the 2nd respondent were not breached, the Court below on thorough appreciation of evidence of R.Ws. 1 and 2 and Ex.B1, had rightly fastened the liability against the Insurance Company and directed it to pay compensation to the claimants along with owner of the tractor whose liability it agreed to indemnify by virtue of Ex.B1-policy.

13. The deceased was aged 20 years by the date of his death. He was hale and healthy prior to his death and was working as labourer. Disputing the above mentioned aspects, no other evidence is adduced by the 2nd respondent. An able bodied person at his young age can easily earn more than Rs.100/- per day by attending to coolie work and this fact has been appreciated rightly by the Court below. If the income of the deceased is taken as Rs.100/- per day, loss of income per month comes to Rs.3,000/-. Thus the income per annum comes to Rs.36,000/-. If 50% of the income of the deceased is deducted towards his personal expenses as he is a bachelor, contribution of income by him to his family comes to Rs.18,000/-. Since the mother of the deceased was 35 years by the date of the death of the deceased, the appropriate multiplier to be applied was 16. If annual loss of income contribution of the deceased is multiplied by 16, the loss of income contribution of the deceased to his family comes to Rs.2,88,000/- The award passed by the Court below indicates that no amount is awarded to the claimants under the head of loss of love and affection. There is no dispute that the deceased was the only son of the claimants. Due to untimely death of the deceased at the age of 20 years, the claimants are put to untold agony. If the death of the

deceased had not taken place accidentally, he would have rendered fullest support to the claimants in their old age. On consideration of the above mentioned aspect, this Court is of the view that awarding compensation of Rs.60,000/- under the head of love and affection is fair and reasonable. The Court below awarded compensation of Rs.10,000/- under the head of loss of estate, and the same in my view can be enhanced to Rs.40,000/-. As it is felt that the amount awarded under the head of funeral expenses is low. The same is enhanced to Rs.15,000/- from Rs.5,000/-. Thus, in my view, the claimants are entitled to get compensation of Rs.4,03,000/-.

14. In view of my finding that the deceased also contributed for the accident by standing on the middle of the bar connected to the tractor to the trailer and the apportionment of negligence as against tractor driver and deceased in the ratio of 75:25, only the 75% of the awarded compensation amount is payable by the owner and insurer of the Tractor bearing No. AP 20T 6435-cum-Trailer bearing No. AP 7U 1605 and it comes to Rs.3,02,250/- and the same is rounded to Rs.3,00,000/-.

15. Accordingly, this appeal is partly allowed with proportionate costs. The claimants are entitled to get compensation of Rs.3,00,000/-(75% of the compensation amount of Rs.4,03,000/-), which is payable by the owner and insurer of the Tractor bearing No. AP 20T 6435-cum-Trailer bearing No. AP 7U 1605 together with interest at 7.5% p.a., from the date of petition till the date of realization. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED:13-07-2018.
Hsd

