

THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1048 of 2006

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act, 1988'), is filed by the appellant/insurance company aggrieved by the order dated 18.01.2006 in M.V.O.P. No.513 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge(Fast Track Court), East Godavari at Rajahmundry ('the Tribunal', for brevity).

2. The respondents 1 to 5/claimants filed the claim petition claiming compensation of Rs.2,00,000/- for the death of one Undurthy Eswara Rao ('the deceased' for brevity), in a road accident that occurred on 06.02.2000 when he was driving tractor and trailer bearing No.AP5X 1737/1738 with gravel load, it turned turtle due to rash and negligent driving of a loaded lorry coming in opposite direction. The Tribunal, vide the impugned order, allowed the claim petition granting compensation of Rs.2,00,000/- against the appellant herein/insurance company and respondent No.6 herein/owner of the offending vehicle.

3. Heard the learned standing counsel for the appellant, the learned counsel appearing for respondents/claimants and perused the record.

4. Learned counsel for the appellant would contend that the deceased was driving the offending tractor and trailer and he died due to his own negligence and therefore claim petition under Section 166 of the Act, 1988 is not maintainable; that the deceased driver was not having valid driving license at the time of the subject accident, to drive the offending vehicle, and therefore the Tribunal erroneously tagged the liability against

the insurance company, and ultimately, prayed to allow the appeal.

5. On the other hand, learned counsel for the respondents-claimants would contend that the deceased was holding a valid driving license at the time of the subject accident; that no doubt, he was driving the offending vehicle at the time of the accident; that in view of the circumstances of the case, the dependants/claimants are entitled to claim compensation either under the Workmen's Compensation Act, 1923 or under the Act, 1988; that the Tribunal rightly recorded finding to that effect; that there is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

6. The points that arise for consideration in the appeal are - whether the appellant-insurance company is liable to pay compensation to the respondents-claimants ?

7. Death of the deceased in the subject accident is not in dispute. While dealing with the subject matter of the claim, the Tribunal held that the subject accident occurred due to rash and negligent driving of deceased himself; the claimants/dependants of the deceased filed claim petition under Section 166 of the Act, 1988 and the Tribunal has jurisdiction to entertain claims arising out of the motor accidents in view of Section 167 of the Act, 1988.

8. Section 167 of the Act, 1988 reads thus:

“Option regarding claims for compensation in certain cases:

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the

provisions of Chapter X claim such compensation under either of those Acts but not under both.”

In view of the language employed under Section 167 of the Act, 1988, the aggrieved persons are entitled to claim compensation either under the Workmen’s Compensation Act, 1923 or under the Act, 1988. In view of the same, no prejudice is caused in assessing and granting compensation in favour of the respondents-dependants of the deceased. The Tribunal had rightly calculated and awarded the compensation. There is no infirmity.

9. Further more, the offending vehicle is a tractor trailer bearing No.AP5X 1737/1738. As per the evidence on record, the deceased was holding light motor vehicle license and it was valid on the date of the accident. The offending tractor trailer is a light motor vehicle. It falls within the definition of Section 2 (21) of the Act, 1988 as its unladen weight does not exceed 7500 KG. The Tribunal had assigned reasons and held that the deceased was having valid driving license. The registration extract of driving license of the deceased was exhibited as Ex.B1. Under these circumstances, it cannot be held that the deceased was not having a valid driving license to drive the offending tractor trailer.

10. As regards quantum, the Tribunal rightly assessed and awarded the compensation basing on the age of the deceased by applying correct multiplier. The findings of the Tribunal are based on evidence on record. There is nothing wrong in granting the compensation against the appellant and respondent No.6-owner to pay jointly and severally to the claimants. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

11. In the result, the Appeal is dismissed.

Miscellaneous Petitions pending, if any, in the appeals shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

12.06.2018
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