

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.3805 OF 2003

JUDGMENT:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 13.05.2002 passed in M.V.O.P. No.626 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Cuddapah (for short, 'the Tribunal'), wherein the Tribunal granted Rs.4,00,000/- as compensation in favour of respondent Nos.1 and 2 herein-claimants against the appellant and respondent No.3 herein, who are the insurer and the owner of the offending vehicle, for the death of G.Rama Bhupal Reddy in a motor accident occurred on 13.03.2000.

2. Heard the learned Standing Counsel for the appellant-insurer of the offending vehicle and the learned counsel for respondent Nos.1 and 2 herein-claimants, apart from perusing the material on record. This appeal against the 3rd respondent herein-owner of the offending vehicle is dismissed for default, vide order dated 07.11.2014.

3. Learned Standing Counsel for the appellant-insurer would contend that the tractor and trailer bearing registration No.AP 04T 6091 and 6092 did not cause any accident on 13.03.2000; there is no mention of vehicle number in the first information report and inquest panchanama; there is no legally acceptable evidence that the tractor and trailer bearing registration No.AP 04T 6091 and 6092 caused the accident resulting in death of G.Rama Bhupal Reddy on 13.03.2000; as per the first information report lodged at the first instance on 15.03.2000, one new tractor and trailer caused the accident on 13.03.2000, whereas the tractor and trailer bearing registration No.AP 04T 6091 and 6092 is an old one; the subject tractor and trailer was incorporated in the charge sheet in order to claim compensation; and on that score, the claim petition of the claimants is liable to be dismissed. He further submits that as per the terms and conditions of the insurance policy, coolies are not entitled to travel by any tractor

and trailer; there is no coverage of insurance policy for coolies travelling by the tractor and trailer; the Tribunal had erroneously tagged liability against the appellant-insurer and awarded excess compensation; and ultimately, prayed to allow the appeal by setting aside the impugned order dated 13.05.2002 passed by the Tribunal.

4. On the other hand, learned counsel for respondent Nos.1 and 2-claimants would contend that the Tribunal had rightly held that the tractor and trailer bearing registration No.AP 04T 6091 and 6092 was driven by its driver in a rash and negligent at high speed and caused the accident resulting in death of G.Rama Bhupal Reddy, who was engaged as coolie in the tractor and trailer; there is no violation of any terms and conditions of the insurance policy by the owner of the tractor and trailer; the award of compensation is just and reasonable; there are no merits to interfere with the impugned order passed by the Tribunal; and ultimately, prayed to dismiss the appeal.

5. The Tribunal basing on the evidence on record, assessed total compensation payable to respondent Nos.1 and 2 herein-claimants at Rs.5,12,000/-, i.e., Rs.4,80,000/- towards loss of dependency, Rs.10,000/- towards loss of consortium, Rs.5,000/- towards loss of love and affection, Rs.2,000/- towards funeral expenses and Rs.15,000/- towards pain and suffering, but restricted the same to Rs.4,00,000/- and granted the same to the claimants with interest at 9% per annum from the date of petition till date of realisation. The Tribunal apportioned the said amount of Rs.4,00,000/- to respondent Nos.1 and 2 herein-claimants as Rs.3,00,000/- and Rs.1,00,000/- respectively. There is no much dispute with regard to the grant of compensation.

6. In view of the contentions putforth by both sides, the points that arise for determination are as follows:

(1) Whether the deceased-G.Rama Bhupal Reddy died in the accident occurred on 13.03.2000 due to rash and negligent driving of the driver of the tractor and trailer bearing registration No.AP 04T 6091 and 6092?

(2) Whether the appellant-insurer be absolved from its liability to pay compensation to the claimants and the impugned order dated 13.05.2002 is liable to be set aside against the appellant-insurer?

7. POINTS: To substantiate the claim, the claimants, who are the wife and minor son of the deceased-G.Rama Bhupal Reddy, examined P.Ws.1 and 2 and got marked Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of inquest report, Ex.A.3-certified copy of the post-mortem examination report, Ex.A.4-certified copy of charge sheet, Ex.A.5-certified copy of M.V.Inspector's report and Ex.A.6-photocopy of pattadar passbook. Admittedly, P.W.1-wife of the deceased is not an eyewitness to occurrence of the accident. P.W.2-V.Jagadeswara Reddy was examined to prove the accident. To rebut the contentions of the claimants, the appellant-insurer examined its employee as R.W.1 and got marked Ex.B.1-copy of insurance policy.

8. P.W.2 is said to be the eyewitness to occurrence of the accident. He deposed that he knew the deceased-G.Rama Bhupal Reddy; he witnessed the accident; the deceased died in a motor accident one year nine months at Nawabpeta, Chinnakomerla road; on the date of the accident, he along with the deceased was travelling by the tractor and trailer belonging to the 3rd respondent herein with load of paddy and the load of paddy belonged to the 3rd respondent-owner of the tractor and trailer; when the tractor and trailer reached near a culvert on Nawabpeta-Chinnakomerla village, the driver of the tractor and trailer drove the same in a rash and negligent manner at high speed and applied sudden brakes, due to which the deceased-G.Rama Bhupal Reddy, who was sitting on the load, fell down from the tractor and the paddy bags fell on him and he

suffered injuries and succumbed to those injuries. In the evidence, P.W.2 did not give the number of the tractor and trailer.

9. P.W.2 is the de facto complainant in Crime No.9 of 2000 of Thalamanchipatnam Police Station. The accident alleged to have occurred on 13.03.2000, but the report was lodged with the police on 19.03.2000. On the basis of that, the F.I.R. marked as Ex.A.1 was issued. In the first information report, there is no mention of the number of the offending vehicle. Ex.A.2 is the certified copy of inquest report of the deceased, wherein also there is no mention of number of the tractor and trailer. There is specific mention in both the above documents that the deceased was carrying paddy bags in the tractor and trailer belonging to the owner of the tractor and trailer. So, when P.W.2 is the de facto complainant and eyewitness to the occurrence of accident and when the deceased was travelling by the tractor and trailer bearing No.AP 04T 6091 and 6092 said to have involved in the accident, nothing prevented from giving the number of tractor and trailer in the first information report as well as the inquest panchanama conducted over the dead body. Ex.A.4 is the certified copy of charge sheet, which was filed before the Judicial Magistrate of First Class, Jammalamadugu, wherein number of the tractor and trailer was given. Certainly, it creates a doubt with regard to the involvement of the tractor and trailer bearing registration No.AP 04T 6091 and 6092. Even P.W.2 did not depose about the number of the tractor and trailer in his evidence. Under these circumstances, it cannot be held that the deceased-G.Rama Bhupal Reddy died due to the rash and negligent driving of the driver of the tractor and trailer bearing registration No.AP 04T 6091 and 6092.

10. The case of respondent Nos.1 and 2 herein-claimants is that the deceased-G.Rama Bhupal Reddy was engaged as a coolie in the tractor and trailer bearing registration No.AP 04T 6091 and 6092 and he died while transporting paddy bags by the tractor and trailer on 13.03.2000. Ex.B.1 is the

copy of insurance policy of the tractor and trailer, under which coolies travelling by the tractor and trailer are not covered. There is specific evidence of R.W.1 to this effect. Though it is a comprehensive insurance policy, the coolies who are transporting agricultural produce or any material are not being covered under Ex.B.1. Further an amount of Rs.370/- was paid for non-fair paid passenger under the column 'NFPP' in Ex.B.1-copy of insurance policy. It covers only the risk of the owner of the goods. Admittedly, the deceased was not the owner of the goods. Under these circumstances, it can be safely concluded that the deceased was only a gratuitous passenger.

11. On this aspect, it is apt to refer the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**¹, where the deceased was travelling in a goods vehicle, the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. In the present case, as there is no involvement of tractor and trailer bearing registration No.AP 04T 6091 and 6092 in the subject accident occurred on 13.03.2000 and there is no coverage of risk of the gratuitous passengers travelling by the said tractor and trailer, the appellant-insurer cannot be made liable to pay compensation. Accordingly, these points are answered.

12. In the result, this appeal is allowed and the impugned order dated 13.05.2002 passed by the Tribunal in M.V.O.P. No.626 of 2000 is set aside accordingly.

13. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 26.06.2018
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¹ 2003(2) SCC 223