

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.529 of 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellants-claimants aggrieved by the order dated 26.10.1994 in O.P.No.624 of 1992 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Medak at Sangareddy (for short 'the Tribunal').

2. Heard the learned counsel for appellants-claimants, the learned counsel for 2nd respondent-Insurance Company and perused the record. The appeal against respondent No.1 was dismissed for default on 04.01.2012.

3. Learned counsel for the appellants-claimants would contend that the deceased-Adivappa was working as a coolie for loading and unloading of goods in the lorries and that on the date of accident, i.e., on 27.12.1991, he was travelling in the offending lorry bearing No.ATT 883 from Zaheerabad to Hamnabad. When the said lorry reached the limits of Sathwar Village, it turned turtle due to the rash and negligent driving of the driver of the lorry, as a result of which, the deceased received multiple injuries and died on the spot. The appellants filed the claim petition claiming compensation of Rs.1,50,000/- for the death of Adivappa in the motor accident, but, the Tribunal did not grant any compensation. Learned counsel relied on the decisions reported in *New India Assurance Company*

*Limited v. Asha Rani and others*¹ and *M/s.National Insurance Company Limited vs. Baljit Kaur and others*².

The decision rendered in *Baljit Kaur's* case was on 06.01.2004 and the decision rendered in *Asharani's* case was on 17.08.2001. It is also contended that the law laid down in *Baljit Kaur's* case is applicable to the present case and ultimately prayed to grant the compensation as prayed for.

4. Learned counsel for the respondent-Insurance Company would contend that the Tribunal justified in holding that there was no negligence on the part of the offending lorry bearing No.ATT 883. The impugned O.P. was filed under Section 166 of the Motor Vehicles Act. The claimants have to prove the negligence on the part of the driver of the offending vehicle. However, there is no coverage of risk of the passengers travelling in the goods vehicle under the act policy. Therefore, no liability can be fastened against the respondent-Insurance Company and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:-

1. Whether the deceased-Adivappa died in a motor accident that occurred on 27.12.1991 due to the rash and negligent driving of the driver of lorry bearing No.ATT 883?
2. Whether the claimants are entitled for compensation as claimed?
3. Whether the Insurance Company be held liable to pay the compensation?

¹ 2003(2) SCC 223

² AIR 2004 SC 1340

POINT No.1:

6. Though P.Ws.1 and 2 are not direct witnesses for the death of the deceased due to rash and negligent driving of driver of offending lorry bearing registration No.ATT 883, there is criminal case records such as Ex.A1-F.I.R. and Ex.A2-inquest report, which reveal that the deceased died due to rash and negligent driving of driver of the offending lorry bearing registration No.ATT 883. The deceased died due to over-turning of the said lorry. No strict proof of negligence is required to claim compensation. The circumstances placed before this Court establish the rashness and negligence on the part of the driver of the offending lorry bearing registration No.ATT 883 and the death of the deceased due to the same. This is point is answered accordingly.

POINT No.3:

7. As per the evidence on record, the deceased was a gratuitous passenger in the offending lorry bearing registration No.ATT 883. The deceased died in the road accident that occurred on 27.12.1991 mid night. The decision in *New India Assurance Company v. Satpalsingh and others*³, was rendered on 02.12.1999. The decision in Asharani's case (1 supra) was rendered by the Apex Court on 17.8.2001. It has prospective operation. The Tribunal was pleased to dismiss the claim against the insurance company by the impugned order dated 26.10.1994, much before the decision rendered by the

³ 2000 SAR (Civil) 140

Apex Court in Asharani's case (1 supra). Therefore, the decision rendered in Satpal singh's case (3 supra) holds the field as on the date of passing the impugned order. As per the evidence on record, there was a valid policy of insurance in respect of the offending lorry bearing registration No.ATT 883 as on the date of subject accident. Under these circumstances, the Tribunal ought not to have dismissed the claim against the respondent-insurance company. Therefore, it is held that the respondents-owner and insurance company are liable to pay compensation to the appellants/claimants. This point is answered accordingly.

POINT No.2:

8. The deceased Adivappa was a colli and was aged about between 41 and 45 years as on the date of the subject accident. The appellants/claimants claimed compensation of Rs.1,50,000/- on account of his accidental death. Claim of Rs.1,50,000/- for the death of a labourer aged between 41 and 45 years under all heads, is not excessive. Hence, the appellants/ claimants are entitled for the compensation of Rs.1,50,000/- as claimed, from respondents jointly and severally.

9. In the result, the appeal is allowed setting aside the order dated 26.10.1994 passed by the Tribunal in O.P.No.624 of 1992 directing respondents 1 and 2 to pay the compensation of Rs.1,50,000/- to the appellants-claimants jointly and severally with interest @ 7.5% per annum from the date of petition till the date of deposit. Out of the said compensation amount, the

1st appellant/wife is entitled for Rs.1,00,000/- with accrued interest thereon and the appellants 2 and 3 are entitled for Rs.25,000/- each with accrued interest thereon. On such deposit, the appellants/claimants are permitted to withdraw the entire amount along with the interest accrued thereon as per their apportionment.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 10.08.2018
Ssp/DRK

