

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.165 OF 2014

JUDGMENT:

Appellant-Insurance Company filed this appeal against the award and decree dated 14.02.2008 passed in O.P.No.761 of 2002 by the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District and Sessions Judge, Mahabubnagar, granting compensation of Rs.1,00,000/- as against the claim of Rs.1,00,000/- to the first respondent-son of the deceased for the death of the deceased in the motor accident occurred on 25.11.2002.

First respondent-claimant filed claim petition under Section 166 of the Motor Vehicles Act against the second respondent and appellant alleging that on 25.11.2002 at about 8.00 p.m. while the deceased was returning home from agricultural fields by walk, tractor bearing No.AP22-U-2953 being driven by its driver in a rash and negligent manner with high speed in reverse gear, dashed against the deceased, due to which, he received bleeding injuries all over the body. He was shifted to Community Hospital, Shadnagar, where he succumbed to injuries. It was further alleged that the deceased was doing agriculture and earning Rs.5,000/- per month, hale and healthy and thereby claimed compensation of Rs.1,00,000/-.

The second respondent-owner of the offending tractor remained *ex parte* before the Tribunal.

The appellant-Insurance Company filed a counter affidavit denying the material averments of the claim petition and praying for dismissal of the claim petition.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident occurred due to rash and negligent driving of the driver of tractor bearing No.AP.22.U.2953?
- 2) Whether the petitioner is entitled to claim compensation from the respondents, and if so to what amount and against whom?
- 3) To what relief?

On behalf of the respondent-claimant, PW.1 was examined and Exs.A.1 to A.4 were got marked. On behalf of the appellant-Insurance Company, R.W.1 was examined and Exs.B.1 to B.4 were got marked.

The Tribunal based on the evidence of PW.1-claimant and documentary evidence under Exs.A.1 and A.2 held that the accident was occurred due to rash and negligent driving of the driver of the tractor by its driver. As regards quantum of compensation, the Tribunal took the average income of the claimant as Rs.18,000/- per annum. As the deceased was aged 50 years at the time of his death, as per Ex.A.3-PME report, the Tribunal applied the multiplier '13'. After deducting 1/3rd therefrom towards personal expenses, the Tribunal arrived the loss of dependency at Rs.1,44,000/-. That apart, the Tribunal awarded Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate and thereby arrived the total compensation at Rs.1,48,500/-. However, as the claim of the claimant before the Tribunal was only Rs.1,00,000/-, the Tribunal restricted the

compensation and awarded an amount of Rs.1,00,000/- towards compensation.

The learned counsel for the appellant-Insurance Company would contend that the offending vehicle was tractor, which is a commercial vehicle, whereas the driver of the offending vehicle was possessing the driving license to drive the light tractor and trailer non-transport. Hence, there was violation of terms and conditions of the policy. Therefore, the appellant-insurance company is not liable to pay the compensation.

Per contra, learned counsel for the claimant made his submissions to sustain the impugned award passed by the Tribunal.

Having heard the learned counsel, this Court found that the Tribunal granted just and fair compensation. The plea of the appellant-Insurance Company that the driver of the offending vehicle was not having valid driving license to drive the offending vehicle could not be countenanced in view of the judgment of the Hon'ble Supreme Court in ***Mukund Dewangan vs. Oriental Insurance Company Limited***¹ wherein it is held that driver holding license to drive light motor vehicle need not obtain a specific endorsement on license authorizing him to drive transport vehicle of that class.

For the reasons stated supra, the appeal fails and liable to be dismissed.

Accordingly, the appeal is dismissed.

¹ AIR 2017 (SC) 3668

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

15.12.2018
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