

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1000 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 16.11.2005 passed in M.V.O.P. No.320 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Guntur (for short, 'the Tribunal'), whereby the Tribunal while granting Rs.1,40,000/- with interest at 7.5% per annum towards compensation to the appellants-claimants for the death of Kambala Anantha Ramaiah in a motor accident occurred on 05.11.2001, dismissed the petition against the insurer of the crime vehicle and directed the owner of the crime vehicle to pay compensation granted to the claimants.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the 2nd respondent-insurer, apart from perusing the material available on record. Though served with notice, none appeared for respondent No.1-owner of the crime vehicle.

4. Brief facts of the case are that on 05.11.2001, the 1st petitioner and her husband-Kambala Anantha Ramaiah (deceased) and others were travelling in a lorry bearing registration No.AP 20T 5913 from Bellamkonda village to load the Cucumbers in their village-Venkatayapalem and when they reached near a tank in Papayapalem village, at about 3-00 p.m., the driver of the lorry drove the same in a rash and negligent manner at high speed, due to which the lorry turned turtle. As a result of which, all the persons travelling in the lorry including the deceased received grievous injuries and the deceased was shifted to Government General Hospital, Guntur, where he succumbed to the injuries on 07.11.2001 while undergoing treatment. The Station House Officer, Bellamkonda

Police Station registered a case in Crime No.64 of 2001 against the driver of the crime lorry for the offences under Sections 337, 338 and 304A I.P.C. The petitioners, being the wife, children and parents of the deceased-Kambala Anantha Ramaiah, claimed compensation from the owner and insurer of the crime lorry.

5. Respondent No.1-owner of the crime vehicle filed counter denying all the averments made in the petition and contended that the deceased was a loading and unloading coolie and it is the 2nd respondent-insurer of the crime lorry alone is liable to pay compensation, if any payable to the petitioners, since the lorry was insured with the 2nd respondent and it was in force by the date of accident.

6. Respondent No.2-insurer filed counter denying all the averments made in the claim petition and contended that the claim made by the petitioners is excessive, the driver of the crime lorry was not having any valid and effective driving licence at the time of accident and it is not liable to pay any compensation to the petitioners.

7. The Tribunal after considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.5 marked on behalf of the petitioners and the evidence of R.Ws.1 and 2 and Ex.B.1 marked on behalf of the 2nd respondent-insurer, granted compensation to the petitioners vide judgment dated 16.11.2005, directing the 1st respondent-owner of the crime vehicle to pay the same and dismissed the petition against the 2nd respondent-insurer. Challenging the said judgment, the claimants preferred this appeal.

8. Learned counsel for the appellants-claimants would submit that the compensation granted by the Tribunal is very meagre; the Tribunal failed to appreciate that the deceased was a loading and unloading coolie at the time of accident; the Tribunal failed to appreciate that in the absence of any pleading or

corroborative evidence on the part of the insurer to establish that the deceased was an unauthorised passenger, it ought to have held that the deceased was a loading and unloading labourer; and ultimately, prayed to allow the appeal by enhancing the compensation and direct the 2nd respondent-insurer to pay compensation to the petitioners.

9. Learned Standing Counsel for the 2nd respondent-insurer would submit that the deceased is not entitled to travel in the accident vehicle; the Tribunal had rightly dismissed the claim against the 2nd respondent-insurer; and ultimately, prayed to dismiss all the appeals.

10. In view of the contentions raised on behalf of respondent No.2-insurer, the point for determination is, whether the impugned order dated 16.11.2005 passed in M.V.O.P. No.320 of 2002 by the Tribunal is sustainable and the petitioners are entitled for enhancement of compensation?

11. **POINT:** The specific case of the petitioners is that the deceased travelled in the lorry as the coolie and the insurer of the lorry is liable to pay compensation to the petitioners. To substantiate the contentions, the petitioners examined P.Ws.1 and 2 and got marked Exs.A.1 to A.5. Ex.A.1 is the certified copy of F.I.R., Ex.A.2 is the certified copy of inquest report, Ex.A.3 is the certified copy of the post-mortem certificate, Ex.A.4 is the certified copy of Motor Vehicles Inspector and Ex.A.5 is the certified copy of the charge sheet. The contention on behalf of the 2nd respondent-insurer is that the deceased was travelling in the lorry as unauthorised passenger. Exs.A.1 and A.2-certified copies of F.I.R. and inquest report do not disclose that the deceased and others were the loading and unloading coolies engaged in the offending lorry to load the cucumbers at Venkatayapalem village. Though the petitioners contended that the deceased was travelling as a coolie along with other coolies in the offending lorry, there is no iota of evidence to substantiate the same. The Tribunal while dealing with this

issue had elaborately analysed the entire evidence on record and concluded that the deceased was a gratuitous passenger in the offending vehicle. To reach the above conclusion, the Tribunal had assigned valid reasons. Therefore, it can be held that the deceased was a gratuitous passenger. Therefore, there is nothing to take a different view.

12. 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 travelled in a goods vehicle and the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

13. As far as the compensation payable to the petitioners is concerned, the Tribunal had conducted a detailed enquiry, assessed the compensation payable and awarded the same against the 1st respondent-owner of the offending lorry. These findings are also basing on the evidence on record. It cannot be said that the said amount of compensation awarded to the petitioners is meagre. There is also nothing to take a different. This point is answered accordingly.

14. In the result, this appeal is dismissed confirming the order dated 16.11.2005 passed by the Tribunal in M.V.O.P. No.320 of 2002.

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

Dr. SHAMEEM AKTHER, J

Date: 07.06.2018
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¹ 2003(2) SCC 223