

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3219 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 06.10.2005 in O.P.No.519 of 2001 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-Insurance Company and perused the record.

3. Though the matter is posted 'for orders', there is no representation for the respondents-claimants. The appeal pertains to the year 2005. Hence, it can be disposed of on merits basing on the material available on record.

4. Learned Standing Counsel for the appellant-insurance company would contend that the Tribunal grossly erred in not examining the recitals in Exs.A1 and A5 and the evidence of R.Ws.1 and 2 to demonstrate that the deceased scooterist dashed the stone boulder and fell down on the road and there was no contact between him and the lorry belonging to the 3rd respondent. Further, as per the evidence, it is clear that the boulder was 10 feet away from the back of the stationed lorry. It is evident from Ex.A2-inquest report. Though the subject accident occurred due to the negligent act of the deceased himself, the Tribunal erroneously made the appellant-insurance company liable to pay the compensation awarded. Under these circumstances, the Tribunal ought not have fastened the liability against the appellant-insurance company. Further, the Tribunal

erroneously took the monthly income of the deceased at Rs.2,100/- without any basis and also contended that the award of compensation of Rs.1,45,000/- is excess and ultimately, prayed to set aside the order passed against the appellant-insurance company.

5. In view of the submissions made by the learned counsel for the appellant-insurance company, the points that arise for determination are as follows:

1. Whether the deceased died due to the negligent act of the driver of lorry bearing No.APB 5252?
2. Whether the subject accident occurred due to the negligence of driver of lorry bearing No.APB 5252?
3. Whether the Tribunal justified in granting the compensation of Rs.1,45,000/- with interest @ 7.5% per annum?

6. POINT Nos.1 and 2:- The claim petition was filed by the wife and son of the deceased-Naikoti Narsimulu against the owner and insurer of the lorry bearing No.APB 5252 claiming compensation of Rs.2,50,000/-. To substantiate the contentions, the claimants examined P.Ws.1 and 2 and got marked Ex.A1-certified copy of FIR, Ex.A2-certified copy of inquest report, Ex.A3-certified copy of MVI report, Ex.A4-certified copy of PME report, Ex.A5-certified copy of charge sheet, Ex.A6-identity card and Ex.A7-pay slip. To rebut the same, the appellant-insurance company examined R.Ws.1 and 2 and got marked Ex.B1-notice, Ex.B2-reply and Ex.B3-copy of policy.

7. P.W.1 is claimant No.2 and son of the deceased. He deposed about the accident occurred on 04.04.2001 and death of his father in the said accident. He stated that the lorry hit the deceased scooterist, due to which, on the next day, the deceased died in the hospital. He also stated that the deceased died due to the negligent

act of the driver of the lorry. P.W.2 is the eye witness to the occurrence of accident. His evidence reveals that the driver of the lorry stationed the lorry in middle of road without any indicators; that boulders were placed on the road around the stationed lorry; that in darkness, the lorry stationed was not visible; that at the time of occurrence of accident, he was 10 feet away from the stationed lorry. He also stated that the accident occurred due to the negligent act of the driver of the stationed lorry. He also stated that he was examined by the police. In cross-examination, he stated that there were boulders on the back side of the lorry.

8. As per the evidence placed on record, the deceased dashed the stationed lorry, sustained injuries and succumbed to the same. As per Ex.A5-charge sheet, P.W.2 is shown as an eye witness to the accident, who stated that the accident occurred between 7.00 or 8.00 P.M. As per the police investigation, the lorry bearing No.APB 5252 was stationed at the scene of offence and stone boulders were placed around the lorry. Without glowing parking lights, the lorry was parked on the wrong side of the road. Due to the darkness, the deceased could not see the boulder and dashed the same, fell down on the road, sustained serious head injury and died. As per Ex.A1-FIR, the driver of the lorry was responsible for the death of the deceased. Further, he was also charge sheeted for the death of the deceased.

9. Negligence is a gross culpable neglect or failure to exercise such care and precaution to guard against injury either to the public in general or to an individual. As per the evidence of R.Ws.1 and 2 and the investigator appointed, the deceased dashed the boulder and died. Admittedly, the subject accident occurred during night hours. As per

the evidence on record, there were boulders around the stationed lorry. The deceased-scooterist dashed the boulders, suffered injuries and succumbed to the same. Had the lorry not been stationed there, no accident would have taken place. Further, as per the evidence, it is established that there were no signals or indicators. There is fault on the part of the driver of the offending lorry in not glowing indicators and signals. No doubt, there was no contact between the lorry and the scooter. The deceased/scooterist dashed the boulders, suffered injuries and succumbed to those injuries. Therefore, it can safely be concluded that the accident occurred due to wrong parking of the offending lorry bearing No.APB 5252 and the subject death had arisen due to the use of the offending lorry as well as the negligence on the part of the driver of the lorry in parking the vehicle in the middle of the road without proper indicators. Under these circumstances, the Tribunal rightly held that the driver of the offending lorry was negligent and responsible for the subject accident and death of the deceased. There is nothing to take a different opinion.

10. POINT No.3:- As per the evidence placed on record, the deceased was 43 years and working as employee in BHEL. The claimants filed salary certificate of the deceased. Having considered the same, the Tribunal had granted compensation of Rs.1,45,000/- with interest @ 7.5% per annum. Under the peculiar circumstances of the case, the granting of compensation of Rs.1,45,000/- with interest @ 7.5% per annum by the Tribunal is not excessive. Point No.3 is answered accordingly.

11. In the result, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 17.09.2018
ssp

