THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.500 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the order and decree dated 06.12.2010 passed in M.O.P.No.831 of 2009 by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam, granting compensation of Rs.3,00,000/- as against the claim of Rs.3,00,000/- for the death of the deceased-Sarika Appalanarayana in the motor accident occurred on 29.02.2008.

Appellants, who are the wife, son and parents of the deceased respectively, filed claim petition under Section 166 of the Motor Vehicles Act against the respondents stating that on 29.02.2008 at about 4.00 a.m. when the deceased and others boarded the Tipper lorry bearing No.AP31 TT 0003 at Anandapuram Junction with vegetables and when they reached Yendada at about 5.00 a.m., the driver of the lorry drove the lorry in a rash and negligent manner and suddenly applied breaks, due to which, the deceased fell down from the lorry and the wheels of the lorry ran over on the deceased causing grievous injuries. By the time he was shifted to hospital, he was declared by the Doctors as brought dead. Claiming that the deceased was earning Rs.10,000/- per month by doing vegetable business, the appellants sought compensation of Rs.3 lakhs.

The 1st respondent, owner of the tipper lorry, remained *ex parte*.

The 2nd respondent-Insurance Company filed counter affidavit denying the material averments of the claim petition and sought for dismissal of the petition.

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

1) Whether the deceased viz., Sarika Appalanarayana died in the motor accident occurred due to the rash and negligent driving of the vehicle bearing No.AP31 TT 0003 (Tipper Lorry) driven by its driver?
2) Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondents?
3) To what relief?

On behalf of the appellants, PWs 1 and 2 were examined and Exs.A.1 to A.4 were got marked. On behalf of the respondents, RWs 1 and 2 were examined and Exs.B.1 to B.4 were got marked.

The Tribunal based on the evidence of PWs 1 and 2 coupled with the documents under Exs.A.1 to A.4 and B.2 held that the accident was the result of rash and negligent driving of the offending vehicle by its driver and thereby answered issue No.1 in favour of the appellants.

As regards quantum of compensation, though the appellants claimed the earnings of the deceased to be Rs.10,000/- per month, in the absence of proof to substantiate the same, the Tribunal has taken the income of the deceased as Rs.3,000/- per month and after deducting 1/3rd therefrom towards personal expenses, the Tribunal arrived the income of the deceased at Rs.2,000/- per month and Rs.24,000/- per annum. As the deceased was aged about 32 years, the Tribunal has adopted the multiplier '17' and calculated the loss of dependency at Rs.4,08,000/-. However, the claim of the appellants before the Tribunal was only for

Rs.3,00,000/-, the Tribunal has granted Rs.3,00,000/- towards compensation.

Further, relying on the decisions reported in ***Jagdish Prasad Gupta vs. Vimlesh Singh***[1]***, United India Insurance Co. Ltd., vs. Puspalatha***[2], ***New India Assurance Co. Ltd., vs. Vedwati***[3] and ***New India Assurance Co. Ltd., vs. K.Bharath Kumar***[4], the Tribunal held that as the deceased was sitting outside the cabin and as no additional premium was paid for coverage of his risk, the Insurance Company is not liable to pay any compensation to the appellants and thereby fastened liability only on R.1-owner of the offending vehicle. Questioning the same, the appellants are before this Court.

Learned counsel for the appellants would contend that as the deceased was travelling in the offending vehicle, which is a goods carrying vehicle, in the capacity of owner of the goods, the Insurance Company is liable to pay compensation and it cannot be absolved from liability. He would further contend that in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[5]***,*** the appellants are entitled for compensation over and above their claim. He would further contend that the appellants are also entitled for compensation under conventional heads as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[6].

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[1] 2010 ACJ 1987
[2] 2010 (2) An.W.R. 285 (Karn.)
[3] 2007 (1) An.W.R. 510 (SC)
[4] 2008 (2) An.W.R. 730 (A.P.)
[5] (2003) 2 SCC 274
[6] 2017 Law Suit (SC) 1093

Per contra, learned counsel for R.2-Insurance Company made his submissions in support of the impugned order. He would contend that as rightly held by the Tribunal, the risk of the deceased was not covered by Ex.B.1-Insurance Policy. Hence, the Insurance Company is not liable to pay any compensation to the appellants and the Tribunal rightly exonerated the Insurance Company from liability.

The issues arise for consideration of this Court in this appeal is 'whether the Insurance Company is liable to pay compensation for the death of the deceased, who was travelling along with vegetable goods in the offending vehicle, and whether the claimants are entitled for enhanced compensation over and above awarded by the Tribunal?

The Tribunal based on the evidence of P.W.1 and Exs.A.1 to A.4 held that the deceased was travelling in the offending vehicle along with his vegetables and the accident was occurred due to rash and negligent driving of the driver of the offending vehicle. But, the Tribunal erred in holding that as the deceased was travelling in the offending vehicle along with his goods sitting outside of the cabin of the body of the offending vehicle, the Insurance Company is not liable to pay any amounts to the appellants. The Tribunal based on the judgments relied on by the learned counsel for the respondent-Insurance Company held that the deceased was travelling along with other vendors, they have not engaged the vehicle for the purpose of transporting the vegetables, they were sitting in the body of the lorry but not in the cabin, no premium is paid to cover their risk and as such the Insurance Company is not liable to pay the compensation. The first respondent-owner alone is liable to satisfy the decree. But, the Hon'ble Supreme Court in ***Manuara Khatun vs. Rajesh Kr. Singh***[7] held on facts that since the victim was travelling in offending vehicle as gratuitous passenger, the Insurance Company cannot be held liable to suffer the liability out of the accident on the strength of the insurance policy. However, keeping in view the benevolent object of the Act and other relevant factors, the Hon'ble Supreme Court directed the Insurance Company to pay the awarded sum to the claimants therein and then to recover the said sum from the insured by applying the principle of 'pay and recover'. Following the ratio laid down by the Hon'ble Supreme Court in ***Manuara Khatun (7 supra)*** and even assuming that the deceased was a gratuitous passenger travelling in the offending vehicle at the time of accident, the respondent-Insurance Company is directed to satisfy the award and then recover the same from the insured-R.1 by following due process of law.

Further, a perusal of the impugned order reveals that the Tribunal has not granted any amounts under conventional heads. But, in view of the judgment of the Hon'ble Supreme Court in ***Pranay Sethi (6 supra)***, the appellants are entitled for Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and the first appellant is entitled for Rs.40,000/- towards loss of consortium.

Though the Tribunal arrived the total compensation at Rs.4,08,000/-, but granted only Rs.3,00,000/- towards compensation since the claim of the appellants before the Tribunal was only Rs.3,00,000/-. However, as per ***Nagappa case (5 supra)***,

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[7] 2017 (2) ALD 65 (SC)

the compensation could be granted over and above the claim. Hence, the compensation awarded by the Tribunal of Rs.3,00,000/- is hereby enhanced to Rs.4,78,000/- (Rs.4,08,000 + Rs.70,000). However, the appellants shall pay the difference of Court Fee for the excess amount of Rs.1,78,000/-.

Accordingly, the appeal is allowed and the compensation amount awarded by the Tribunal of Rs.3,00,000/- is enhanced to Rs.4,78,000/-, out of which, first appellant is entitled for Rs.1,78,000/- and the remaining appellants are entitled for Rs.1 lakh each along with proportionate costs and interest. The respondent-Insurance Company shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with proportionate costs and interest @ 6% per annum, after deducting the amounts if any already deposited, payable to the appellants within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellants are at liberty to withdraw their respective share amounts. Further, the respondent-Insurance Company is at liberty to recover the amounts paid by it from R.1-insured-owner of the offending vehicle by following due process of law.

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

(M.GANGA RAO, J)

30.11.2018
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