

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1023 OF 2006

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellants/petitioners challenging the judgment and award, dated 07.11.2005 passed in O.P.No.408 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On the intervening night of 07/08.11.2000 at about 1:00 AM, one Banoth Mohan (hereinafter referred to as 'the deceased') boarded the lorry bearing No.ABT 3085 at Nizamabad to go to Morthad side along with other labourers. When the lorry reached near Lakora Village, the driver of the lorry had driven the same in a rash and negligent manner and dashed against the road side tree. Due to accident, the deceased sustained injuries on various parts of the body and died on the spot. The Station House Officer, Velpur Police Station, registered a case in Crime No.62 of 2000 for the offences punishable under Sections 304A, 337 and 338 I.P.C. against the driver of the lorry. By the time of death, the deceased was aged about 25 years and used to earn an amount of Rs.6,000/- per month. Petitioner No.1 is the wife, petitioner No.2 is the father, petitioner No.3 is the sister and petitioner Nos.4 and

5 are the brothers of the deceased. The petitioners are dependants on the income of the deceased. Respondent No.1 is owner and respondent No.2 is insurer of the crime vehicle. Hence, the petitioners filed a petition claiming compensation of Rs.5,00,000/- from respondent Nos.1 and 2.

4. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that there was no negligence on the part of the driver of the lorry to cause the accident. The lorry bearing No.ABT 3085, which belongs to this respondent, was insured with the second respondent insurance company at the time of accident. Therefore, the second respondent alone is liable to pay the compensation to the petitioners.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. The first respondent violated the terms and conditions of the policy; therefore, this respondent is not liable to pay compensation to the petitioners. Hence, the petition is liable to be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

- (1) Whether the accident was due to rash and negligent driving of the Lorry bearing No.ABT 3085 driven by its driver?
- (2) Whether the petitioners are entitled to compensation? If so, to what amount and from whom?
- (3) To what relief?

7. During the course of enquiry, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.3 were marked. On behalf of the second respondent, no oral evidence was adduced and Ex.B.1 was marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ABT 3085, which resulted in the death of the deceased and awarded compensation of Rs.2,00,000/- to the petitioners by fastening the liability on respondent No.1 alone as the policy does not cover the risk of the labourers. The Tribunal dismissed the petition against the second respondent.

9. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

10. Learned counsel for the petitioners-appellants strenuously submitted that Ex.B.1 policy was in force as on the date of accident; therefore, the second respondent has to indemnify the liability of the first respondent. He further submitted that the Tribunal dismissed the petition against the second respondent on assumptions and presumptions. He further submitted that the judgment and award of the Tribunal is not sustainable either on facts or in law so far as dismissing of the petition against the second respondent is concerned.

11. *Per contra*, learned counsel for the second respondent submitted that the first respondent has not paid the premium covering the risk of the labourers and the same was considered by the Tribunal in right perspective. He further submitted that there

are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal.

12. Now the point that arises for consideration in this appeal is:

Whether the Tribunal is not justified in dismissing the petition against the second respondent?

13. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ABT 3085. The finding recorded by the Tribunal on this aspect became final in view of non-filing of the appeal by the respondents.

14. At the time of arguments, learned counsel for the appellants-petitioners, in all fairness, submitted that he is not disputing the quantum of compensation awarded by the Tribunal. Therefore, this Court is of the considered view that the compensation awarded by the Tribunal is just and reasonable.

15. The perusal of Ex.B.1 policy clearly reveals that the lorry bearing No.ABT 3085, which belongs to the first respondent, was insured with the second respondent as on the date of accident. A perusal of the record clearly reveals that the first respondent paid premium covering the risk of driver and cleaner of the crime vehicle. The insurance company is liable to pay compensation provided the owner of the crime vehicle pays the premium covering the risk of the employees. Admittedly, the first respondent did not pay the premium covering the risk of the employees engaged by him. In such circumstances, whether the Tribunal is justified in dismissing the petition against the second respondent? In order to

resolve the issue, this Court is placing reliance on the decision in **The New India Assurance Co. Ltd., rep. by its Branch Manager Vs. Lodya Shankar and others**¹, wherein the relevant portion of paragraph No.7 reads as follows:

“.....Unless there is a contract between the owner of the motor vehicle and the insurer, the insurer cannot be made liable for payment of compensation due from the owner of the motor vehicle to a third party. So, unless the owner of the vehicle pays premium to cover the risk of the coolies being transported in his lorry, the insurer cannot be made liable for payment of the compensation due to them from their owner. When second respondent insured his vehicle with the appellant to cover the risk of his driver and cleaner only, it cannot be made liable for payment of the compensation payable by the second respondent to his coolies being transported in his lorry, who are not covered by the policy issued by it.”

16. As per the principle enunciated in the case cited supra, the insurance company is not liable to pay compensation to the victims of road accident if the policy does not cover risk of such persons.

17. The facts of the case on hand are almost identical to the facts of the case cited supra.

18. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that there is no contractual obligation on the part of the second respondent to indemnify the liability of the first respondent so far as coolies engaged on the lorry. The Tribunal has considered the recitals of Ex.B.1 policy in right perspective and arrived at a conclusion that there is no contractual obligation on

¹ 2004 (3) ALD 400

the part of the second respondent to indemnify the liability of the first respondent. I am fully endorsing the findings recorded by the Tribunal. There are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal.

19. In the result, the Appeal is dismissed. There shall be no order as to costs.

20. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.03.2018
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