

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3207 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), is filed by the appellant-claimant, challenging the order, dated 25.02.2004, passed in M.O.P.No.1407 of 2002, by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam ('the Tribunal', for brevity).

2. Heard the learned counsel for the appellant-claimant, the learned Standing Counsel for 2nd respondent-Insurance Company and perused the record.

3. The learned counsel for the appellant-claimant would contend that the deceased-M.Appayamma was travelling in the offending van bearing registration No.AP-05-T-2788 on the date of subject accident as owner of the goods. There is evidence of P.W.1-M.Chandra Rao to that effect. The Tribunal erroneously dismissed the claim against the 2nd respondent-Insurance Company. Further, the Tribunal had granted meagre compensation of Rs.1,06,000/- with interest @ 9% per annum from the date of petition till the date of payment in favour of the appellant-claimant as against a claim of Rs.2,00,000/- and ultimately prayed to fasten the liability to pay compensation against the 2nd respondent-Insurance Company and to enhance the compensation as claimed.

4. On the other hand, the learned Standing Counsel for the 2nd respondent-Insurance Company would contend that there is no iota of evidence to substantiate that the deceased was travelling in the offending van bearing registration No.AP-05-T-2788 as owner of

goods on the date of the subject accident. Therefore, the Tribunal rightly dismissed the claim against the 2nd respondent-Insurance Company. Further, the Tribunal awarded just and reasonable amount as compensation. There are no circumstances to enhance the compensation and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:-

1. **Whether the Tribunal is justified in dismissing the claim against the 2nd respondent-Insurance Company holding that the deceased was travelling as an unauthorised/gratuitous passenger in the offending van bearing registration No.AP-05-T-2788 as on the date of subject accident?**
2. **Whether the appellant-claimant is entitled for enhancement of compensation as claimed.**

Point No.1:-

6. It is not in dispute that the deceased-M.Appayamma suffered fatal injuries in the subject accident occurred on 07.03.2002 and succumbed to the same, due to rash and negligent driving of the driver of the van bearing registration No.AP-05-T-2788. The appellant-claimant (son of the deceased) himself deposed as P.W.1 before the Tribunal. He deposed that on the date of subject accident, the deceased boarded the offending van bearing registration No.AP-05-T-2788 with a load of vegetables in order to transport them from S.Rayavaram to Yelamanchili. He, being the son of the deceased, is an interested witness and it is not safe to act upon his sole testimony. Except the testimony of P.W.1, there is no other material on record to substantiate that the deceased travelled in the offending van on the date of accident with vegetables. P.W.2-P.Ganeswara Rao, who was an eye-witness to the subject accident and who was the

proper person to speak about the same, remained silent on this aspect. In the entire criminal case record, there is no mention anywhere that the deceased was carrying vegetables in the offending van bearing registration No.AP-05-T-2788 on the date of the subject accident. Even otherwise, merely carrying the vegetables in the offending van on the date of subject accident does not make the deceased owner of goods. The Tribunal had elaborately discussed the entire evidence on record on this aspect and rightly held that the deceased was travelling as an unauthorised/gratuitous passenger in the offending van bearing registration No.AP-05-T-2788 on the date of the subject accident. In **New India Assurance Company Limited Vs. Asha Rani and others**¹, wherein, the deceased travelled in a goods vehicle as a gratuitous passenger, the Apex Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. In view of the same, the finding of the Tribunal on this aspect is based on evidence on record. There is nothing to take a different view. This point is accordingly answered in favour of the 2nd respondent-Insurance Company and against the appellant-claimant.

Point No.2:-

7. As far as assessment and grant of compensation is concerned, the Tribunal, after analysing the entire evidence on record, took the age of the deceased as 49 years, her annual income as Rs.12,000/-, deducted 1/3rd of it towards her personal expenses and by applying the appropriate multiplier '13', granted a compensation of Rs.1,04,000/- towards loss of dependency. The Tribunal further granted an amount of Rs.2,000/- towards funeral charges. In all, the Tribunal granted a compensation of Rs.1,06,000/- with interest @ 9%

¹ 2003 (2) SCC 223

per annum from the date of petition till the date of deposit. Grant of said compensation in favour of the appellant-claimant is just and reasonable. There is nothing to take a different view. There are no circumstances to enhance the compensation. The appeal is devoid of merit and is liable to be dismissed.

8. In the result, the appeal is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

AUGUST 31, 2018

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Date:31.08.2018

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