

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3074 OF 2007

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/M/s.Royal Sundaram Alliance Insurance Company Limited, aggrieved by the grant of compensation of Rs.1,90,500/- with proportionate costs and future interest at the rate of 7.5% per annum from the date of petition till deposit, as against a claim of Rs.3,00,000/- by the learned Chairman, Motor Accident Claims Tribunal – cum - I Additional Chief Judge, City Civil Court, Secunderabad (for short, “the Tribunal”) *vide* order, dated 07.09.2007, passed in M.V.O.P.No.202 of 2004.

2. Heard the submissions of the learned Standing Counsel appearing for M/s.Royal Sundaram Alliance Insurance Company Limited representing the appellant and the learned counsel for respondent Nos.1 to 6/claimants, and perused the material on record.

3. Learned Standing Counsel for M/s.Royal Sundaram Alliance Insurance Company Limited representing the appellant would contend that the deceased Abdul Sattar was negligent in driving the scooter bearing No.AP 28 D 4293 on 11.11.2003 and dashed the stationed lorry bearing No.KA 39 1335; that the Tribunal, applying the principle of strict liability, ultimately granted a compensation of Rs.1,90,500/- in favour of the claimants against the owner and insurer of lorry bearing No.KA 39 1335, which is

unsustainable in law, and ultimately, prayed to set aside the impugned order.

4. On the other hand, learned counsel for respondent Nos.1 to 6/claimants would contend that there was no negligence on the part of the deceased Abdul Sattar; that the accident occurred due to the wrong parking of the lorry bearing No.KA 39 1335 without proper indications; that the Tribunal rightly fixed the liability against the owner and insurer of the offending lorry bearing No.KA 39 1335 and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to assessing and awarding of compensation. The only dispute is with regard to the negligence aspect. As per the evidence placed on record, on 11.11.2003, at 9:15 P.M., when the deceased Abdul Sattar was proceeding by his scooter bearing No.AP 28 D 4293 from Khohir towards Bidar on the extreme left side of the road with great care and diligence and when he reached near Madiri Village outskirts on N.H.9, near Narinjavagu Bridge, the lorry bearing No.KA 39 1335 was being stationed facing towards Zaheerabad side in the middle of the road without any indication in the dark night for repairs, and due to the focus lights from the opposite vehicles, the deceased met with an accident, as a result of which, the deceased sustained head injury and other injuries and succumbed to injuries on the spot. To substantiate the claim of the claimants, P.W.1, who is the wife of the deceased Abdul Sattar, was examined and Exs.A-1 to A-6 were marked. Ex.A-1 is the attested copy of F.I.R. and Ex.A-2 is the attested copy of final report. Admittedly, P.W.1 was not the eye witness to the occurrence of the accident. Exs.A-1 and A-2 are

contra to the pleadings and evidence that the accident occurred due to the negligence on the part of the driver of the stationed lorry bearing No.KA 39 1335. The Tribunal applied the principle of strict liability and tagged the whole liability on the lorry owner and lorry insurer.

6. 'Rashness' does not consist of high speed but consists of not taking proper care and caution in driving a vehicle and not following the rules of road safety. 'Negligence' on the other hand, is gross culpable neglect or failure to exercise such care and caution that may be required to be taken in the circumstances of the case. Admittedly, the lorry was not being plied and it was only stationed. However, there is no evidence on behalf of the lorry owner and lorry insurer to demonstrate that the lorry was properly parked in the road margin and the driver of the lorry had taken all precautions. Had the driver of the lorry taken all precautions, the subject accident would not have occurred resulting in the death of the deceased Abdul Sattar. No person will go and hit a stationed lorry. The accident occurred at 9:15 P.M. There were laches on the part of the driver of the scooter bearing No.AP 28 D 4293 also in driving the scooter. It cannot be held that the deceased/rider did not contribute negligence for the occurrence of the accident. Under these circumstances, it is held that the deceased contributed 25% of the negligence for the occurrence of the accident. Therefore, the owner and the appellant/insurer of the lorry bearing No.KA 39 1335 and respondent No.8 are liable to pay only 75% of the compensation awarded by the Tribunal. Further, it is directed that owner and insurer of the lorry bearing No.KA 39 1335 shall calculate 75% of the compensation awarded by the

Tribunal together with interest thereon and total costs awarded by the Tribunal and deposit the same before the Tribunal within one month from the date of receipt of a copy of this order.

7. With the above modification, the appeal is partly allowed.
There shall be no order as to costs.

8. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 09.08.2018
AMD



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