

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 822 OF 2011

JUDGMENT:

This appeal is filed by the appellant/4th respondent-Insurance company under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award dated 11.08.2010 passed by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Khammam, in M.V.O.P.No.477 of 2002.

2. The brief facts of the case are that on 19.12.2001, the deceased Venkateswarlu was shifting the Hitachi Volva Proclainer from Suryapet by loading the same in the offending lorry bearing No.HR38-C-0431 and were proceeding from Suryapet to Gadwal in Mahabubnagar District. On the way, when the lorry reached Nagarkurnool cross roads, the lorry came in contact with the electrical line passing by the side of the road, as a result the deceased got electrocuted, fell down, sustained burn injuries and died while he was shifting to the hospital.

3. The 4th respondent-Insurance company alone filed counter denying the averments of the claim petition and it is further averred that the accident was not occurred due to rash and negligent driving of the driver of the lorry. The deceased died due to his own negligence of sitting over the excavator in the lorry and came in contact with a live wire

and there was a breach of the terms and conditions of the policy and that the compensation claimed is exorbitant.

4. Based on the pleadings, the Tribunal framed the following issues:

1) Whether the accident took place on account of rash and negligent driving of the driver of Lorry bearing No.HR-38-C-0431?

2) Whether the petitioners are entitled to claim compensation? If so, to what amount and from which of the respondents?

3) To what relief?

5. On behalf of the claimants, PWs 1 and 2 were examined and Exs.A.1 to A6 were marked. On behalf of the 4th respondent, RW1 was examined and Ex.B.1 was marked.

6. The Tribunal, based on the evidence of PW1 and PW2 and the evidence available on record, came to the conclusion that due to rash and negligent driving of the driver of the offending vehicle, the vehicle came in contact with an electric live wire passing by the side of the road and thereby the deceased got electrocuted, fell down from the cabin of the vehicle and died.

7. The learned counsel for the appellant vehemently contended that there is a contributory negligence on the part of the deceased. The deceased was sat on the proclainer came in contact with a live wire due to negligence, got

electrocution and died. The appellant/4th respondent has not produced any legal evidence to substantiate its version. In Para 11 of the judgment, the Tribunal discussed the contention of the appellant/respondent and negated the same and held that there was negligence on the part of the driver of the vehicle and there is no contributory negligence on the part of the deceased. The Tribunal has rightly held that as the offending vehicle is a heavy duty vehicle, the driver has to take care of the vehicle to see that it could not contact with any live wires on the road side. It is the responsibility of the driver of the offending vehicle to take necessary precautions and he having failed to do so, the insurer is made liable to pay compensation. However, the insurance company has no grievance in quantum of compensation granted by the Tribunal.

8. The learned counsel for the respondents/claimants relied on the decision of the Hon'ble Apex Court in *Halappa Vs. Malik Sab*¹ and contended that Exs.A.1 and A.2 – FIR and charge sheet have no evidentiary value without any independent evidence adduced by the respondents before the Tribunal.

9. Admittedly, the contents of FIR and charge sheet are not gospel truths and the Tribunal rightly had not taken Exs.A.1 and A.2 into consideration as there is no independent

¹ 2018 ACJ 686

evidence to that of the evidence of PWs 1 and 2. The version of the appellant and the respondents 6 to 8 could not be proved. Hence, this Court finds that the Tribunal has not committed any error in coming to the conclusion that due to rash and negligent driving of the driver of the vehicle, the lorry contacted the electrical live wire, as a result the deceased due to electrocution fell down, sustained burn injuries and died. There is no contributory negligence on the part of the deceased. There is no evidence in support of the said contention. Hence, the plea of contributory negligence is failed as it is not proved.

10. Accordingly, the appeal is dismissed. No order as to costs.

11. Miscellaneous Petitions, if any, pending in these appeals shall also stand dismissed.

JUSTICE M.GANGA RAO

31-08-2018
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