

THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

C.M.A. No.3793 of 2004

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed aggrieved by the order dated 13.04.2004 in O.P. No.276 of 1999 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge(Fast Track Court), Anantapur ('the Tribunal', for brevity).

2. The appellant herein is claimant No.2 in the O.P. Respondent No.1 is the owner, and respondent No.2 is the insurer, of the offending vehicle.

3. The appellant/claimant No.2 and another filed the claim petition claiming compensation of Rs.1,00,000/- for the death of their minor son V.T.Ramanjineyulu in a road accident that occurred on 14.11.1998 due to rash and negligent driving of driver of tractor bearing No.APM 3556. Vide the impugned order, the Tribunal, considering the evidence on record, granted compensation of Rs.50,000/- against respondent No.1/owner of the offending vehicle and dismissed the O.P. in respect of respondent No.2/insurer. Challenging the same, the present appeal was preferred.

4. Heard the learned counsel for the appellant and the learned standing counsel appearing for respondent No.2-insurance company.

5. Learned counsel for the appellant would contend that the offending vehicle was used for agricultural purposes; that the driver of the offending vehicle was having valid driving license, and that the policy of insurance was in force, as on the date of the accident; that there are no violations of the terms and conditions of the policy; that the Tribunal, having assessed and

granted compensation at Rs.50,000/-, dismissed the claim against respondent No.2-insurer of the offending vehicle, which is erroneous; that the Tribunal ought to have granted compensation of Rs.1,00,000/- as claimed against both the respondents, and ultimately, prays to allow the appeal as prayed for.

6. On the other hand, learned counsel for the respondent-insurance company would contend that the deceased boy was aged about 13 years as on the date of the accident; that the offending tractor was insured for agricultural purpose; that a compressor was erected in the tractor and it was being used for non-agricultural purposes; further, the deceased was a gratuitous passenger in the tractor; that the Tribunal held that there was no negligence on the part of the driver of the tractor in causing the accident; that in view of the above circumstances, the Tribunal rightly granted compensation of Rs.50,000/- against respondent No.1 only and dismissed the claim as against respondent-insurer; that the findings of the Tribunal are based on the evidence on records and there are no grounds to interfere with the same.

7. The points that arise for consideration in the appeal are - whether the quantum of compensation awarded by the Tribunal is liable to be enhanced and whether the respondent-insurance company is liable to pay the compensation?

8. The appellant herein, who is mother of the deceased boy, was examined as P.W.1 in the O.P. As seen from the evidence on record, the accident was occurred on 14.11.1998. It is not in dispute that age of the deceased boy as on the date of the accident was 13 years. After analysing the entire evidence on record, the Tribunal held that the first respondent in the O.P. (owner of the offending vehicle) and the claimant No.1 are one and the same, and that there was no negligence or rashness on

the part of the driver of the offending tractor in causing the accident. As per the evidence on record, at the time of the accident, king pin of the axle of the vehicle had broken, due to which the tractor turned turtle. The aspect of rashness or negligence on the part of the driver of the offending vehicle had not been proved. The Tribunal rightly calculated the compensation. The findings are based on the evidence on record. There is nothing to take a different view.

9. As regards the liability of the respondent-insurance company to pay the compensation awarded by the Tribunal, on this aspect, it is apt to refer to the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**¹, wherein the Hon'ble Supreme Court held that where the deceased was travelling in a goods vehicle, the insurer of the offending vehicle is not liable to pay any compensation to the claimants. The decision rendered in *Asha Rani* case (1 supra) holds the field.

10. In the present case, as seen from the evidence on record, the deceased, aged about 13 years, was accompanying his father at the time of the accident. It is not in dispute that the Ex.R1-insurance policy was in force on the date of the accident and the vehicle was insured for agricultural purpose only and it can carry 3 labourers engaged by the owner. As seen from Ex.P1-certified copy of F.I.R., the claimant No.2 who lodged the report to police, stated that he let out the tractor on hire to E.C.C. company which was laying water pipe lines in Mudigubba area. Therefore, it can be safely be concluded that at the time of the accident, the offending tractor was being used for non-agricultural purposes. The deceased cannot be considered as a workman working on the tractor. In the circumstances, it can be concluded that the deceased was only a gratuitous passenger travelling by the offending tractor. In

¹ 2003(2) SCC 223

view of the decision rendered in *Asha Rani's* case (1 supra), gratuitous passenger is not entitled for compensation from the insurance company. The submissions made on behalf of respondent-insurer deserve consideration. No liability can be tagged against the respondent-insurer. The Tribunal, after assigning number of reasons, rightly held the same. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

11. In the result, the Appeal is dismissed.

Miscellaneous Petitions pending, if any, in the appeals shall stand closed. No order as to costs.

13.06.2018
DRK

Dr. SHAMEEM AKTHER, J



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