

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL Nos. 4634 AND 4731 OF 2004

COMMON JUDGMENT:

Both the appeals are filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the common order dated 16.07.2004 passed by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Vijayawada (for short, 'the Tribunal') in M.V.O.P. Nos.277 of 2001 and 276 of 2001, wherein the Tribunal while dismissing the claim against the 3rd respondent-insurer, granted an amount of Rs.2,00,000/- in favour of the petitioner in M.V.O.P. No.277 of 2001, who is the appellant in C.M.A. No.4634 of 2004, and an amount of Rs.1,61,000/- in favour of the petitioners in M.V.O.P. No.276 of 2001, who are the appellants in C.M.A. No.4731 of 2004.

2. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the 3rd respondent-insurer in both the appeals. Both the appeals against the 1st respondent-driver of the offending vehicle are dismissed for default vide the order dated 08.02.2016. Though served with notice, none appeared on behalf of the 2nd respondent in both the appeals.

3. Learned counsel for the appellants-claimants would contend that both the deceased in these cases were the owner of the goods, they were not gratuitous passengers; the Tribunal did not grant adequate compensation; when there is a valid driving licence to the driver of the offending lorry bearing registration No.AP 16U 5709, the Tribunal ought not have dismissed the claim against the 3rd respondent-insurer and it would have directed the 3rd respondent-insurer to pay compensation at first

instance and recover the same from the owner of the offending vehicle; and ultimately, prayed to allow the appeal by directing the 3rd respondent-insurer to pay the compensation to the claimants.

4. On the other hand, the learned Standing Counsel for the 3rd respondent-insurer would contend that the deceased were gratuitous passengers in the offending lorry and there is specific finding to that effect by the Tribunal; no liability can be tagged to the 3rd respondent-insurer; and ultimately, prayed to dismiss the appeal.

5. There is no much dispute with regard to the death of Sirigiri Srinivasa Rao (deceased in M.V.O.P. No.277 of 2001), who was the son of the appellant in C.M.A. No.4634 of 2004, and the death of Putta Srinivasa Rao (deceased in M.V.O.P. No.276 of 2001), who was the son of the appellants in C.M.A. No.4731 of 2004, in a motor accident occurred on 17.03.1998 due to the rash and negligent manner of the driver of lorry bearing registration No.AP 16U 5709.

6. In view of the contentions putforth by both sides, the following points have come up for determination:

- (1) Whether the Tribunal had granted just and reasonable compensation in favour of the appellants-claimants?
- (2) Whether the 3rd respondent-insurer be directed to pay the compensation awarded to the appellants-claimants at first instance and later recover the same from the 2nd respondent-owner of the offending lorry bearing registration No.AP 16U 5709?

7. POINT No.1: The Tribunal while dealing with the assessment of compensation had taken all the facts into consideration, more particularly, the oral and documentary evidence and awarded Rs.2,00,000/- in favour of the petitioner in M.V.O.P. No.277 of 2001 and Rs.1,61,000/- in favour of the petitioners in M.V.O.P. No.276 of 2001 as compensation. There is nothing to take a different view. Accordingly this point is answered.

8. POINT No.2: It is averred by the appellants-claimants that the deceased in both the claim petitions were travelling in the offending lorry bearing registration No.AP 16U 5709 and there was a load of paint tins in the offending lorry. The self-serving statement of P.W.1 is that the deceased were the owners of the goods in the lorry. There is no documentary evidence to substantiate the same except self-serving statement of P.W.1. There are no details of the goods being carried by the deceased. The Tribunal had analysed the entire oral and documentary evidence and held that the deceased were travelling in the offending lorry as gratuitous passengers and not as owners of the goods. The said finding recorded by the Tribunal is based on the principles laid down in the catena of decisions rendered by the Hon'ble Supreme Court.

9. It is apt to refer the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**¹, where the deceased was travelling in a goods vehicle, the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

¹ 2003(2) SCC 223

10. The finding recorded by the Tribunal with regard to the direction given to respondent Nos.1 and 2-driver and owner of the offending lorry to pay compensation awarded jointly and severally holds good. There are no circumstances to vary and to direct the 3rd respondent-insurer to pay compensation awarded at first instance and then recover the same from the 2nd respondent-owner of the offending lorry. Under these circumstances, both the appeals are devoid of merit and they are liable to be dismissed.

11. In the result, both the appeals are dismissed, confirming the impugned common order dated 16.07.2004 passed by the Tribunal in M.V.O.P. Nos.277 of 2001 and 276 of 2001. As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 29.06.2018

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Dr. SHAMEEM AKTHER, J

