

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.3642 of 2004

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), is filed by the appellants-claimants, challenging the order, dated 06.05.2004 passed in M.V.O.P.No.713 of 2001 by the Chairman, Principal Motor Accident Claims Tribunal-cum-Principal District Judge, Warangal ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants-claimants claiming a compensation of Rs.2,50,000/- for the death of the deceased-G.Sreenu, who died in a motor accident occurred on 30.03.2001, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the appellants-claimants would contend that the deceased-G.Sreenu was travelling by a Tractor-Trailer bearing registration Nos.AP-36-G-1594 & 1595 on the date of accident. The subject accident occurred on 30.03.2001 due to the rash and negligent driving of the driver of the said Tractor-Trailer. The investigation conducted by the police reveals the same. There is also evidence of P.W.1 and P.W.2 to that effect. The Tribunal, without taking into consideration the oral and documentary evidence on record, erroneously dismissed the claim petition of the appellants-claimants and ultimately prayed to set aside the order under challenge and grant compensation to the appellants-claimants, as claimed.

4. On the other hand, the learned counsel for the 2nd respondent-owner of the Tractor-Trailer bearing registration Nos.AP-36-G-1594 & 1595 would contend that there is inconsistency in the evidence of P.W.1 and P.W.2 with regard to the deceased travelling in the offending Tractor-Trailer on the date of accident and suffering injuries in the subject accident. The Tribunal appreciated the facts and circumstances of the case in correct perspective and rightly dismissed the claim petition of the appellants-claimants. There is nothing to take a different view and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. The learned Standing Counsel for the 3rd respondent-Insurance company supported the submissions made by the learned counsel for the 2nd respondent-owner of the offending Tractor-Trailer and contended that the policy under which the offending Tractor-Trailer was insured was an 'act Policy'. There is no coverage of the risk of the gratuitous passengers travelling on the offending Tractor-Trailer. The Tribunal justified in dismissing the claim petition of the appellants-claimants and ultimately prayed to dismiss the appeal by confirming the order under challenge.

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

1. Whether the deceased-G.Sreenu died due to the injuries suffered by him in the subject accident due to rash and negligent driving of the driver of the Tractor-Trailer bearing registration Nos.AP-36-G-1594 & 1595?
2. Whether the appellants-claimants are entitled for compensation as claimed, and if so, to what extent and from whom?

Point No.1:

7. P.W.1-G.Ramulu is the father of the deceased-G.Sreenu. He deposed that the subject accident occurred on 30.03.2001 at 1400 hours at outskirts of Suripelli Village main road; On that day, his son (deceased) wrote SSC examination and after completion of examination, he boarded the offending Tractor-Trailer in a happy mood to go to Nekkonda to watch a movie; On the way to Nekkonda, his son suffered fatal injuries and succumbed to the same in the subject accident, due to the rash and negligent driving of the driver of the offending Tractor-Trailer. Through him, Ex.A.1- Attested copy of FIR, Ex.A.2-Attested copy of Inquest report, Ex.A.3-Attested copy of PME Report, Ex.A.4-Attested copy of Remand Case Diary, Ex.A.5-Copy of MVI Report and Ex.A.6- Attested copy of Insurance Cover note, were marked. In the cross-examination of P.W.1, he stated that he gave a report to the police and that he did not witness the subject accident.

8. The appellants-claimants got examined P.W.2-Kandikatla Yellaiah. He deposed that he is a resident of Yellayagudem village and that he knows the deceased. On the date of the subject accident, he was going to Nekkonda along with the deceased in the offending Tractor-Trailer. The deceased was sitting on the Tractor by the side of its driver. Due to rash and negligent driving of the driver of the offending Tractor, the deceased fell down from the offending Tractor-Trailer and died. The injured was sent to the hospital. In the cross-examination of P.W.2, he denied the suggestion that he did not witness the subject accident.

9. Ex.A.1 is the First Information Report. P.W.1 (father of the deceased) lodged a report with the police on 31.03.2001 stating that on the date of subject accident, i.e., on 30.03.2001, his son (deceased), after completion of SSC examination, boarded the offending Tractor in a happy mood to go to Nekkonda to watch a movie; He came to know on the same day evening that due to rash and negligent driving of the driver of the offending Tractor-Trailer, the offending Tractor-Trailer turned turtle near Surupalli Shivar, his son fell down from the offending Tractor-Trailer and died; The driver of the offending Tractor-Trailer took the dead body of the deceased in the same Tractor-Trailer to a distant place (Ameenpet Shivar), left the dead body of the deceased and the offending Tractor-Trailer there and ran away from there. P.W.2 stated that the injured was shifted to hospital for treatment. P.W.2 had categorically deposed that the subject accident occurred due to rash and negligent driving of the driver of the offending Tractor-Trailer. The contents of Ex.A.2-Attested copy of inquest report reveal that the deceased suffered fatal injuries and succumbed to the same in the subject accident occurred due to rash and negligent driving of the driver of the offending Tractor-Trailer. Ex.A.3-Post Mortem Examination Report of the deceased reveals that the injuries mentioned in Ex.P.3 are possible in a road accident. P.W.2 specifically deposed that the deceased suffered injuries and succumbed to the same in the subject accident occurred due to rash and negligent driving of the driver of the offending Tractor-Trailer. Entire investigation conducted by the police revealed that the deceased suffered injuries and succumbed to the same in the subject accident occurred due to rash and

negligent driving of the driver of the offending Tractor-Trailer. P.W.1 had categorically mentioned in the report lodged with the police that after the subject accident, the driver of the offending Tractor-Trailer took the dead body of the deceased in the same offending Tractor to a distant place, left the dead body of the deceased and the offending Tractor there and ran away from there. Entire evidence on record clinchingly establishes that the deceased suffered injuries and succumbed to the same in the subject accident occurred due to rash and negligent driving of the driver of the offending Tractor-Trailer. The Tribunal, without analysing the entire evidence on record in correct perspective, had erroneously disbelieved the occurrence of the subject accident. In view of the above discussion, it can be safely concluded that the deceased-G.Sreenu died due to the injuries suffered by him in the subject accident occurred on 30.03.2001 due to rash and negligent driving of the driver of the Tractor-Trailer bearing registration Nos.AP-36-G-1594 & 1595. This point is accordingly answered in favour of the appellants-claimants and against the respondents 1 and 2.

Point No.2:-

10. The appellants-claimants are the parents of the deceased-G.Sreenu. They claimed a total compensation of Rs.2,50,000/- for the death of their son (deceased). As per the evidence on record, the deceased was an 18 years old boy as on the date of accident. Had he survived in the subject accident, he would have gained some employment and would have supported his parents. Considering the same, this Court is inclined to take the monthly income of the deceased notionally at Rs.2,000/-. Since the

deceased was a bachelor, half of the income is to be deducted towards his personal expenses. So, the annual loss of dependency would come to Rs.12,000/- (Rs.1,000/- x 12). As per the decision of the Apex Court in the case between Sarla Verma v. Delhi Transport Corporation¹, the suitable multiplier applicable to the age of the deceased (18 years) is '18'. So, the total loss of dependency would come to Rs.2,16,000/- (Rs.12,000/- x 18). Death of their son aged 18 years would certainly have caused grief to the appellants-claimants. P.W.1 deposed that the deceased was his only son. Considering the same, this Court is inclined to award an amount of Rs.20,000/- to the appellants-claimants towards loss of estate and Rs.14,000/- towards funeral and other expenses. Thus, the appellants-claimants are entitled for a total compensation of Rs.2,50,000/-, as claimed, with interest @ 7.5% per annum from the date of petition till realisation.

11. Ex.A.6 is the attested copy of Insurance Cover note pertaining to the offending Tractor-Trailer. The said policy was an 'act Policy' and it does not cover the risk of the gratuitous passengers. It is apt to refer the decision of the Apex Court in New India Assurance Company Limited v. Asha Rani and others², wherein, the deceased travelled in a goods vehicle as a gratuitous passenger and in the circumstances, the Apex Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. The decision of the Apex Court in Asha Rani's case supra holds the field. Therefore, the claim against the 3rd respondent-Insurance company is liable to be

¹ AIR 2009 SC 3104

² 2003(2) SCC 223

dismissed. The appeal against the 1st respondent was dismissed for default, vide order, dated 08.02.2016 passed by this Court. Hence, the 2nd respondent-owner of the Tractor-Trailer bearing registration No.AP-36-G-1594 & 1595 is liable to pay compensation to the appellants-claimants.

12. Accordingly, this appeal is allowed, granting a compensation of Rs.2,50,000/- to the appellants-claimants with interest at the rate of 7.5% per annum from the date of petition till realisation. The 2nd respondent-owner of the offending Tractor-Trailer bearing registration Nos.AP-36-G-1594 & 1595 is liable to pay the aforementioned compensation to the appellants-claimants and he is directed to deposit the compensation awarded within a period of 30 days from the date of receipt of a copy of this order. On deposit of the compensation, the appellants-claimants are permitted to withdraw the entire compensation with interest accrued thereon equally. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

20th August, 2018
Bvv

Dr. SHAMEEM AKTHER, J