

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3463 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellants-claimants aggrieved by the order dated 24.03.2003 in M.V.O.P.No.391 of 1999 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Cuddapah (for short 'the Tribunal').

2. Heard the learned counsel for the appellants-claimants, the learned Standing Counsel for the 2nd respondent-Insurance Company and perused the record. The claim against respondent No.1 was dismissed for default on 21.09.2005.

3. Learned counsel for the appellants-claimants would contend that the deceased was the owner of the goods. The Tribunal did not fasten the liability against the respondent-Insurance Company, which is erroneous. The Tribunal had granted lesser compensation and ultimately prayed to enhance the same.

4. On the other hand, learned counsel for the respondent-Insurance Company would contend that the Tribunal justified in assessing and granting the compensation of Rs.1,54,880/- against the owner of the offending vehicle. The deceased was not carrying any goods in the offending vehicle. Therefore, there is nothing to vary and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:-

1. Whether the Tribunal justified in granting compensation of Rs.1,54,880/- ?

2. Whether the respondent-insurer be held liable to pay the compensation?

6. POINT No.1:- There is no dispute with regard to the death of the deceased-Eswaraiah in a motor accident that occurred on 20.07.1998 due to the rash and negligent driving of the driver of the lorry bearing No.ATK 3659.

7. The Tribunal while determining the compensation has taken all the facts, circumstances and legal aspects into consideration and awarded the compensation at Rs.1,54,880/-. This finding is based on evidence on record. There is nothing to take a different view.

8. POINT No.2:- Though it is contended that the deceased was not a gratuitous passenger in the offending lorry bearing No.ATK 3659, there is no iota of legally acceptable evidence to substantiate the same. The said issue was elaborately dealt by the Tribunal. The findings of the Tribunal are based on evidence on record.

9. Learned counsel for the appellants-claimants had relied on a decision reported in *Manuara Khatun and others vs. Rajesh Kumar Singh and others*¹, wherein it was held that when there was violation of terms and conditions of policy of insurance, insurer of Tata Sumo was directed to deposit the compensation at the first instance and then recover the same from the owner of the offending vehicle. In the instant case, it is a goods vehicle. The appellants-claimants are not similarly placed. So, the direction to pay and recover cannot be given. Under these circumstances, the Tribunal rightly awarded the

¹ 2017 ACJ 1031

compensation at Rs.1,54,880/- against the owner of the offending vehicle. The appeal is devoid of merit and is liable to be dismissed.

10. In the result, the appeal is dismissed accordingly.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 21.08.2018
ssp

