

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

**M.A.C.M.A. Nos.1349 of 2005, 1356 of 2005, 1376 of 2005
and 1389 of 2005**

COMMON JUDGMENT:

These appeals, under Section 173 of the Motor Vehicles Act, 1988, are filed aggrieved by the common order dated 07.03.2005 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Warangal ('the Tribunal', for brevity) in M.V.O.P. Nos.630 of 2002, 772 of 2002, 773 of 2002 and 628 of 2002. The appellants herein are claimants in the respective O.Ps.

2. Respondent No.1 is the owner, and respondent No.2 is the insurer, of the offending vehicle. For better appreciation of facts, the parties are hereinafter referred to, as they are referred in the respective claim petitions.

3. The claimants in M.V.O.P. No.630 of 2002 filed the said petition claiming a compensation of Rs.3,89,864/- for the death of one Maloth Jekiya, who is husband of claimant No.1 therein and father of claimant Nos. 2 and 3 therein, in a motor vehicle accident that occurred on 26.9.2001 at Komatipally cross roads, Sriramsagar Canal when the tractor bearing No.AP36U 7595, in which the deceased and others were travelling, fell into canal due to rash and negligent driving of its driver.

(b) The claimant in M.V.O.P. No.772 of 2002 filed the said petition claiming compensation of Rs.2,00,000/- for the injuries sustained by him in the aforesaid accident.

(c) The claimant in M.V.O.P. No.773 of 2002 filed the said petition claiming compensation of Rs.2,00,000/- for the injuries sustained by him in the aforesaid accident.

(d) The claimants in M.V.O.P. No.628 of 2002 filed the said petition claiming a compensation of Rs.3,49,880/- for the death

wife of claimant No.1 and mother of other claimants, in the aforesaid accident.

4. The Tribunal, after considering the entire evidence on record, awarded compensation of a sum of Rs.1,40,000/- to the claimants in M.V.O.P. No. 630 of 2002; a sum of Rs.35,000/- to the claimant in M.V.O.P. No.772 of 2002; a sum of Rs. 75,000/- to the claimant in M.V.O.P. No.773 of 2002, & a sum of Rs.1,23,600/- to the claimants in M.V.O.P. No.628 of 2002, against respondent No.1 (owner of the offending vehicle) only and dismissed the M.V.O.Ps. insofar as respondent No.2-insurance company. Challenging the same, the present appeals were preferred by the respective claimants.

5. Heard the learned counsel for the appellants/claimants and the learned standing counsel appearing for respondent No.2-insurance company.

6. Learned counsel for the appellants-claimants would submit that the Tribunal granted meagre compensation without taking proper multiplier in cases of death and without considering proper income of the deceased and injured persons; that the compensation granted on the other heads is also meagre; that the Tribunal is not justified in dismissing the claim against respondent-insurance company, and at least it should have directed the insurance company to pay the compensation and recover the same; that there are several decisions on this aspect rendered by the Hon'ble Apex Court, and ultimately, prays to allow the appeals as prayed for.

7. On the other hand, learned counsel for the respondent-insurance company would contend that the deceased persons and injured persons along with other persons 20 in number, were travelling by the tractor bearing No.AP36U 7595 at the time of the accident to settle a dispute of Sarpanch of the village; that the deceased persons and injured persons are

gratuitous passengers and there is no coverage of insurance to them, and so, no liability can be tagged to the respondent-insurance company; that the Tribunal rightly granted just and reasonable compensation against respondent-owner of the offending tractor and there are no circumstances to allow the appeals as prayed for, and ultimately, prayed to dismiss the appeals.

8. Now, the points that arise for consideration in these appeals 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?

9. As per the oral and documentary evidence, on 26.9.2001, the deceased persons, injured persons and 20 other persons were travelling by tractor bearing No.AP36U 7595, and when it reached Komatipally cross roads, Sriramsagar Canal, it fell into canal due to rash and negligent driving of the driver of the vehicle. As a result, the deceased persons died and some other persons suffered injuries. It is evident from the oral and documentary evidence placed on record. There is nothing to take a different view.

10. As far as assessment of compensation is concerned, the Tribunal had taken the correct ages of the deceased and other factors into consideration and after applying appropriate multiplier, awarded compensation of a sum of Rs.1,40,000/- to the claimants in M.V.O.P. No. 630 of 2002; a sum of Rs.35,000/- to the claimant in M.V.O.P. No.772 of 2002; a sum of Rs. 75,000/- to the claimant in M.V.O.P. No.773 of 2002, & a sum of Rs.1,23,600/- to the claimants in M.V.O.P. No.628 of 2002. There is nothing to take a different view insofar as the quantum of compensations. The only question that falls for determination is whether respondent-insurance company be

made liable to pay the compensation jointly and severally along with the owner of the offending tractor bearing No.AP36U 7595?

11. 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.

12. In the present case, the deceased persons, injured persons and 20 other persons were travelling in a tractor and there was no premium paid for the risk of the unauthorised passengers. As per Ex.A2-registration certificate, the offending vehicle is a tractor meant for agricultural use only. The evidence on record would go to show that the aforesaid persons were returning in the offending tractor after attending a panchayat of Ex-sarpanch. Ex.A1-attested copy of FIR would go to show that they went in the tractor to Tharsingh Bavi Thanda to settle a dispute of sister of Ex-sarpanch of the village with her husband and there were about 20 persons in the tractor and were returning to their village. Ex.A25 charge sheet also discloses the above facts. Therefore, the contention of the claimants that the deceased persons, injured persons and others were travelling in the tractor as labourers for loading and unloading, is not acceptable. Under these circumstances, they cannot be held as labourer engaged to loading and unloading in the tractor. They were only gratuitous passengers. There is no contractual obligation on the part of the insurer to indemnify the owner of the offending vehicle in respect of passengers travelling in offending vehicle. Further, the direction sought to pay and recover, also cannot be ordered. Under these circumstances, the Tribunal rightly declined to tag liability

¹ 2003(2) SCC 223

against the 2nd respondent-insurer. The appeals are devoid of merit and liable to be dismissed.

13. In the result, the Appeals are dismissed.

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

Dr. SHAMEEM AKTHER, J

13.06.2018

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