

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 242 OF 2012

Judgment:

This appeal is filed by the appellants/petitioners challenging the order dated 10.03.2004 in O.P.No.427 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Khammam, whereunder for a claim of compensation of Rs.1,50,000/- consequent on the death of the deceased Kota Tirapathaiah, a sum of Rs.65,000/- was granted but the insurance Company was excluded.

2. The appellants herein are the petitioners - claimants, respondents 1 and 2 are the driver and owner of the lorry and the third respondent is the Insurance Company. They are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The petitioners are the brothers of the deceased Kota Tirapathaiah. The case of the petitioners is that the deceased was travelling in the lorry bearing No. ABW 2277 to go to Tiruvuru and when the lorry reached near Sathemmagudi of Ganeshpadu village due to rash and negligent driving of the lorry driven by its driver i.e., first respondent, the lorry turned turtle and the said Tirapathaiah received injuries and died.

4. Respondents 1 and 2 remained *ex parte*. The third Respondent filed counter denying the averments in the petition. After considering the material on record, the Tribunal granted compensation of Rs.65,000/- against the respondents 1 and 2 only and dismissed the claim against the third respondent - Insurance Company holding that the deceased was a gratuitous passenger and therefore, the Insurance Company is not liable to pay the compensation.

5. When the matter is taken up for hearing, it is submitted by the learned counsel for the respondents and admitted to by the learned counsel for the appellants that the subject matter of this MACMA is squarely covered by the judgment of this Court passed in MACMA No.2194 of 2011, dated 21.09.2011, which is as follows.

“Evidently, the facts clearly disclose that the deceased was travelling as a gratuitous passenger and the liability of the Insurance Company is not there as per the decision reported in *New India Assurance Company v. Asha Rani*¹. So far as the quantum of compensation is concerned, Rs.2,00,000/- was claimed and a claim of Rs.1,80,000/- was granted and though the learned counsel for the appellants claims that he is entitled for enhancement of compensation, the reasons given by the lower Tribunal are clear with regard to the quantum of compensation and there are no merits in the appeal.

Accordingly, M.A.C.M.A. is dismissed. There shall be no order as to costs.”

6. Hence, following the said judgment, this MACMA is dismissed on the same and similar terms.

7. As a sequel thereto, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12th October 2018
Nsr

¹ 2003(1) ACJ 1

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