

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1540 OF 2008

JUDGMENT:

This appeal is filed by the appellant/3rd respondent/insurance company aggrieved by the Order and Decree dated 06.04.2004 passed in O.P.Nos.269 of 2000 & 613 of 2000 by the Motor Vehicle Accidents Claims Tribunal (I Additional District Judge) at Karimnagar (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

3. The petitioners/claimants in both the O.Ps. are one and the same. O.P.No.613 of 2000 is filed by the petitioners/claimants under Section 166(1)(c) of the Motor Vehicles Act claiming compensation of Rs.2,00,000/- and O.P.No.269 of 2000 is filed by the claimants under Section 140 of the Motor Vehicles Act claiming a compensation of Rs.50,000/- under no fault liability with interest @ 18% per annum from the date of petition till realization with costs.

4. The brief facts in both the cases are that the 1st petitioner/1st claimant is the wife and petitioners 2 to 5/claimants 2 to 5 are the children of Late Kodem Vishwanathan, resident of Baddam Yellareddinagar, Sircilla. The deceased was a business man and was earning Rs.5,000/- per month being aged 42 years by the date of the accident. On 21.02.2000, when the deceased was traveling in an auto trolley bearing No.AP 15U 2060 belonging to the 2nd respondent and being driven by the 1st

respondent from Sircilla to Venkatapoor in connection with his business, on the way, the trolley reached a Spinning mill at Peddur at bout 6.30 p.m. Then the 1st respondent drove the auto in a rash and negligent manner at high speed and lost control over it, as a result of which the deceased fell down and sustained injuries on his head and other parts of his body. Then, he was shifted to his house and then he was taken to the Government Hospital, Sircilla, and there he succumbed to the injuries. On a report given, a case in Crime No.20 of 2000 was registered under Section 304-A of IPC, on the file of the Sircilla Police Station. Further, all the petitioners/claimants were depending upon the deceased for their livelihood and the deceased was contributing his entire income for the family and because of his death, they lost their source of livelihood and his love and affection. Further, the 3rd respondent/insurance company was the insurer of the vehicle. Hence, all the respondents are liable to pay the compensation claimed.

5. Before the Tribunal, respondents 1 & 2 remained *ex parte*. Respondent No.3 filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petitions.

6. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto trolley and awarded total compensation of Rs.186,980/-

with interest @ 9% per annum i.e., Rs.1,53,480/- towards loss of income, Rs.15,000/- towards loss of consortium to the 1st petitioner/1st claimant, Rs.15,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.1,000/- towards transportation charges, by fixing the liability against the 3rd respondent alone. Aggrieved by the same, the appellant/3rd respondent/insurance company filed the present appeal.

7. Heard.

8. A perusal of the order reveals that the Tribunal passed a well considered order by taking into consideration all the aspects and as against the claim of Rs.2,00,000/-, the Tribunal awarded an amount of Rs.1,86,980/- with proportionate costs and interest @ 9% per annum. Therefore, I see no reason to interfere with the order of the Tribunal. Insofar as Tribunal fixing the liability on the 3rd respondent to pay the compensation is concerned, on the basis of the evidence, the Tribunal came to the conclusion that the 1st respondent is the driver of the auto trolley and the 2nd respondent is the owner of the crime vehicle and the 3rd respondent/appellant/insurance company is the insurer of the vehicle and the deceased was sitting in the auto trolley and from Ex.B-1, it is seen that the appellant issued valid insurance policy for the crime vehicle and it was in force by the date of the accident. Accordingly, the Tribunal exonerated the liability of respondent Nos.1 & 2 and directed respondent No.3 to pay the compensation amount. In the similar circumstances, the Hon'ble

Supreme Court in **Shivaraj Vs. Rajendra**¹, directed the insurance company to pay the compensation amount at the first instance and recover the same from the owner of the crime vehicle.

9. Learned counsel for the appellant submits that since the crime vehicle is a goods vehicle and the deceased was sitting and travelling in the said crime vehicle, he prayed to exonerate the liability of the insurance company and fix the liability on the 2nd respondent/owner of the crime vehicle to pay the compensation amount.

10. In view of the same, respondent No.3 is directed to pay the compensation amount at the first instance and recover the same from respondent No.2. Except the said modification, the remaining operative portion of the impugned order is confirmed.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by directing the appellant/3rd Respondent/insurance company to pay the compensation amount at the first instance and recover the same from the 7th respondent/2nd respondent/owner of the crime vehicle. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 24th June, 2019

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¹ 2018 AIR (SC) 4252