THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.764 OF 2019

JUDGMENT:

This appeal is filed by the appellant/3rd respondent/insurance company in M.V.O.P.No.416 of 2014 aggrieved by the order and decree dated 04.02.2019 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nalgonda (for short, the Tribunal).

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

3. The brief facts of the case are that the 1st petitioner is the father, 2nd petitioner is the mother and 3rd petitioner is the sister of the deceased-Gundeboina Upender. On 04.06.2014 the deceased, who is working as a cleaner and one Janaki Ramulu being driver of lorry bearing No.AP-29-V-4458 (crime vehicle) loaded sand at Kanagal river and proceeding towards Nalgonda side and on the way at about 4.00 a.m., when the lorry reached near Kothapally stage, the driver of the said lorry drove the vehicle in rash and negligent manner in high speed and dashed against the lorry bearing No.AP-24-Y-2889, which was stationed on the road. As a result of which, the deceased sustained injuries and on the way while shifting to District Head Quarters Hospital, Nalgonda, died. The deceased was aged about 38 years, hale and healthy and was earning Rs.6,000/- per month

as a cleaner of the crime vehicle and contributed earnings to his family and maintained his family. Respondents 1 & 2 are the owners of the offending lorry bearing No.AP-29-V-4458 and the 3rd respondent is its insurer and respondents 4 & 5 are the owner and insurer of the lorry bearing No.AP-24-Y-2889. Hence, the petitioners filed the claim petition claiming compensation of Rs.10,00,000/-, payable by all the respondents.

4. Before the Tribunal, the 3rd respondent/insurance company filed counter denying the averments of the claim petition and contended that the 1st respondent, who is the driver of the crime vehicle, was not having driving license and the crime vehicle was not insured and that the accident occurred due to gross negligence of other lorry bearing No.AP-29-V-4458 while driving the same without observing the stationed lorry and the 3rd respondent/insurance company is not liable to pay the compensation and the amount claimed is excessive and prayed to dismiss the claim petition.

5. The 1st respondent filed counter denying the material allegations of the petition and contended that the other lorry bearing No.AP-24-Y-2889 was stationed without taking precautionary measures and as such the accident occurred due to the negligence of the other lorry, which was parked and therefore, the 1st respondent is not liable to pay any compensation.

6. The 2nd respondent remained *ex parte.*

7. The 4th respondent, who is the owner of the stationed lorry, filed counter denying the allegations made in the petition and contended that his stationed lorry was insured with the 5th respondent and the insurance was in force and there was no fault on the part of his lorry driver, who stationed and who is not concerned with the accident.

8. The 5th respondent/insurance company of the alleged stationed lorry bearing No.AP-24-Y-2889 filed counter contending that the 5th respondent does not admit the manner in which the accident occurred and further about the existence of the police at the time of the accident, he has no liability to pay the compensation.

9. After considering the oral evidence of P.Ws.1 & 2 and R.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-7 and Exs.B-1 to B-10, the Tribunal came to the conclusion that the crime vehicle dashed the stationed lorry and there is no fault on the part of the stationed vehicle, there is no contra evidence to show that the stationed vehicle was parked in the negligent manner without taking any precautions and awarded a total compensation of Rs.5,96,000/- with interest @ 9% per annum from the date of petition till the date of deposit, i.e., Rs.5,76,000/- towards loss of earnings, Rs.10,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. Aggrieved by the same, the appellant/3rd respondent/insurance company filed the present appeal.

10. Heard Sri A.Ramakrishna Reddy, learned standing counsel for the appellant/3rd respondent/insurance company and Sri N.Mukunda Reddy, learned counsel for respondents 1 to 3/claimants.

11. Learned standing counsel for the appellant/3rd respondent/insurance company submits that the cheque issued by the owner of the crime vehicle towards payment of premium got dishonoured for insufficient funds and accordingly, notice has been sent and also RTA was informed and all steps available have been taken by the appellant/3rd respondent and the appellant/3rd respondent/insurance company is not liable to pay the compensation.

12. In support of their claim, the appellant/3rd respondent/insurance company filed the original notice with the envelope before this Court and the same is taken on record by allowing the I.A.No.5 of 2019 and the document is marked as Ex.B-10.

13. With regard to fastening of liability is concerned, whether the liability has to be fastened on the owner of the crime vehicle or on its insurer, evidence has to be appreciated before the Tribunal and accordingly, the liability has to be fastened. In view of the same, this Court feels that the matter needs to be remanded back to the Tribunal for better appreciation of the evidence and appropriate orders be passed.

14. Accordingly, the appeal is allowed setting aside the order and decree, dated 04.02.2019, in M.V.O.P.No.416 of 2014 passed by the Tribunal and remanding the matter to the Tribunal by giving liberty to both sides to place evidence on the file of the Tribunal. The Tribunal shall appreciate the oral and documentary evidence and then pass appropriate orders, as expeditiously as possible. Registry is directed to send the record to the Tribunal. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 13th November, 2019

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