

*** HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

+ M.A.C.M.A.No.1547 OF 2005

% 05-03-2019

Khajjam Ramachandraiah

..PETITIONER

VS.

\$ Smt.B.Ananthamma (died) and others.

..RESPONDENTS.

! Counsel For The Petitioner: Sri Kota Subba Rao

^ Counsel For Respondents: Sri Venkataiah Ediga

< Gist :

> Head Note :

? CITATIONS :

1. 2011 (4) ALD 36 (SC)
2. (2001) 2 SCC 9
3. 2011 (4) ALD 332
4. 2010 (4) ALD 531 DB
5. 1991 ACJ 101
6. (2018) 7 SCC 687

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY
M.A.C.M.A.No.1547 OF 2005

JUDGMENT:

The present appeal is filed by the appellant under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") against the judgment and decree dated 01-11-2004 passed in O.P.No.766 of 2000 by the Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Ranga Reddy District ('Tribunal'), wherein and whereby the Tribunal granted Rs.2.00 lakhs towards compensation against the appellant herein, who is the 2nd respondent in the claim petition along with interest @ 9% per annum from the date of petition till date of payment.

02. The appellant herein, is the 2nd respondent and owner of the goods and respondents 1 to 4 were petitioners/claimants and 5th respondent herein is the 1st respondent, who is the owner of the vehicle, in the original petition.

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

04. Sri Kota Subba Rao, learned counsel for the appellant submits that the appellant is not liable to pay

the compensation and it is only the owner of the vehicle in which goods are loaded is alone responsible to pay the compensation, as death of deceased Subbaiah occurred due to use of motor vehicle, which involved in the accident and that the deceased died while loading the goods belonging to the appellant. In support of his contention, he relied on the judgments of Apex Court in **New India Assurance Co.Ltd., v. Yadu Sambhaji More¹** and **Smt.Kaushnuma Begum v. The New India Assurance Co.Ltd.²** and also the judgment of this Court in **United India Insurance Co. Ltd., Hyderabad v. P.Prabhavathi³, Bhupati Prameela v. Superintendent of Police, Vizianagaram⁴** and judgment of Kerala High Court in **Motor and General Finance (India) Ltd., v. Mary Mony⁵**.

05. The matter underwent several adjournments and finally on 19-02-2019, learned counsel for the appellant was heard and as none appears for the respondents, the matter was directed to be posted on 20-02-2019 for orders. On 20-02-2019, learned counsel for the appellant was heard again and learned counsel for the respondents

¹ 2011(4) ALD 36 (SC)

² (2001) 2 SCC 9

³ 2011 (4) ALD 332

⁴ 2010 (4) ALD 531 (DB)

sought time for producing some judgments. When the matter is listed today, there is no appearance for the respondents.

06. The brief facts of the case are that petitioner No.1 is the wife, petitioner Nos 2 to 4 are the minor children of petitioner No.1 and her husband late Sathaiah. The deceased Sathaiah aged 30 years, who was working as a Hamali, earning Rs.3000/- per month, was loading ground nut bags on 30-05-1999 in the lorry bearing No.AHT 6011 belonging to the 1st respondent at Dharoor Chowrastha Bus stand and the bags belongs to the 2nd respondent, who is a Food Grains Commission Agent, at Dharoor and also having a shop at Vikarabad. Due to over loading, the bags fell on deceased Sathaiah and he sustained multiple injuries. Deceased Sathaiah was shifted to Government hospital, from there he was shifted to Osmania General Hospital. However, while Sathaiah was being shifted so, when they reached Vikarabad, he succumbed to injuries on the way at 6 pm. That the family of deceased Sathaiah was entirely depending on his earnings only. Hence, the petitioners filed petition claiming compensation of Rs.2.00 lakhs

⁵ 1991 ACJ 101

from the 1st respondent, owner of the lorry and the 2nd respondent the businessman whose goods were being loaded to lorry. Since petitioner No.1 died, during the pendency of the petition, the minors are represented by their maternal uncle, one Narsimhulu as guardian.

07. Subsequent to filing of the original petition, the 3rd respondent was impleaded as owner of the accident vehicle from 07-09-1991 and on 24-07-2001, the same was purchased by the 1st respondent from him.

08. Respondent Nos 1 and 3 remained exparte.

09. Respondent No.2 who is the owner of the goods contested the petition. It is contended by him that he has nothing do with the lorry and goods that were loaded into the lorry on the date of accident and that he is not aware as to who was the owner of the vehicle. It is also contended that the 2nd respondent is a businessman and residing at Vikarabad and never went to Dharoor and having any business in that village. Hence, prayed to dismiss the petition with costs.

10. From the above pleadings, the following issues have been framed for trial:-

1. Whether the accident occurred due to the rash and negligent driving of the vehicle bearing No.AHT 6011?

2. Whether the accident vehicle was insured with R2 and there is any violation of policy conditions?
3. Whether the petitioner is entitled for any compensation, if so, from whom and to what extent?

11. Since the 2nd respondent is not at all the insurer, the question of violation of policy conditions does not arise. But the Tribunal inadequately, entered wrong issues and recasted the issue as follows:

2. Whether R2 is the owner of goods liable to pay any compensation?

12. On consideration of the issues, the Tribunal passed award for Rs.2.00 lakhs towards compensation against the 2nd respondent only with costs and interest @ 9% per annum from the date of petition till the date of payment. Questioning the same, the present appeal is filed.

13. In the present case, it is to be seen that regarding issue No.1 the Tribunal held that the respondents/claimants established that deceased who was working for 2nd respondent/appellant died due to injuries sustained by him, when gunny bags belonging to the appellant fell upon him while they were being loaded in the lorry. It is also found that lorry is stationed and it is being loaded but not in movement. Regarding issue Nos 2 and 3, the Tribunal found that goods belong to the

appellant, who is the 2nd respondent before the Tribunal. As such, the 2nd respondent is liable to pay compensation. A reading of the findings of the Tribunal on issue Nos 1 to 3 goes to show that the Tribunal fastened the liability on the appellant on the ground that goods were belonging to him and that since there is no movement of the vehicle, the liability cannot be fastened on the respondent Nos 1 and 3 though they are impleaded as the owners of the lorry.

14. There is no dispute in regard to the fact situation occurring in the present case leading to the death of the deceased Sathaiah.

15. The only issue that is required to be gone into the appeal is whether the appellant is liable to pay the compensation as owner of the goods, which are in the process of being loaded into the lorry bearing No.AHT 6011 or the 5th respondent, who is the owner of the vehicle.

16. To decide the above issue, it is required to establish whether the death of deceased occurred out of use of motor vehicle.

In the judgment of **Bhupati Prameela** cited (4 supra), Division Bench of High Court of Andhra Pradesh held as under:

35. Now, let us examine the words "accidents arising out of use of motor vehicle". A reading of Section 165 of the Act gives an impression that claims Tribunals are constituted under Section 165 of the Act for the purpose of adjudicating upon the claims for compensation in respect of accidents involving death or bodily injury to persons arising out of the use of the motor vehicles or damages to property of a third party so arising or both. In a case between Motor and [General Finance \(India\) Ltd., v. Mary Mony](#), **1991 ACJ 101 (Ker)**, it was held as follows :-

"Tribunal is given power to adjudicate claims for compensation arising out of the use of motor vehicles. Words "use of motor vehicles" in **section 110(1) of motor vehicles act, 1939**, cover all engagements of the motor vehicle; no restrictions as to the class of victims of the accident are imposed by the Legislature".

36. Let us examine few cases wherein, under different circumstances, the words "accidents arising out of use of the motor vehicle" have been intercepted.

37. In a case between [V.G. Sumant v. Shailendra Kumar](#), AIR 1980 MP 101, it was observed as follows:-

.....A motorcycle, which was mechanically in order, was parked by the side of the road. It rolled down a slope through the intervention of some of the mischievous children. The question came up for consideration was whether it was an accident or not. It was held that it

was an accident, which arose due to the use of the motorcycle.

38. In **Swarnalata Dutta Barua and another v. M/s. National Transport India Pvt. Ltd. and another**, AIR 1974 Gauhati 31 while discussing the rash and negligent driving and dealing with a case in which, the bus met with an accident while crossing unmanned railway level crossing, it was held that it was the duty of the driver to look both ways of the track before crossing the same. Failure amounts to negligence.

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40. In [Mangilal v. M.P.S.R.T.C. Bhopal](#), AIR 1988 MP 109 it was held that the vehicle need not be actually running to treat it as an accident. In that case a person died falling from a ladder attached to the bus, when the bus halted in a bus station. It was held that it is an accident arising out of use of the vehicle.

41. In a case between [Andhra Pradesh State Road Transport Corporation v. P. Venkat Rao](#), 2001 (4) ALD 412 : 2001 (4) ALT 466 it was held as follows.-

"Where certain miscreants stopped the bus on way and entered it carrying petrol with them and set fire to the bus resulting in death and injuries to several passengers and the conductor and driver failed to prevent the said miscreants from bringing petrol with them, it amounts to negligence on the part of the driver and conductor and the State Transport Corporation is vicariously liable to pay compensation to the claimants and the injured persons."

42. In a case between [Medikonda Narasamma v. Shaik Basheer Ahmed](#), AIR 2001 AP 114, it was held as follows.-

"Expression use of motor vehicle covers the accident happening even when the vehicle is stationary. The cause of the accident should reasonably be proximate to the use of the motor vehicle, whether it is in motion or not. Where the cotton bales loaded in the lorry were loosely packed, and while unloading a bale, it fell on a nearby person resulting in his death, it was held that the insurance company is liable to pay compensation."

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45. Therefore, the above examples show that the vehicle need not be in motion at the time of the accident. That means, the driver of the vehicle need not be driving the vehicle at the time of accident. Careless parking of the vehicle without indication or without parking lights and not taking proper care of the parked vehicle also amounts to rash and negligent use of the vehicle.

The Supreme Court in the judgment of **Kalim Khan v. Fimidabee**⁶ after analyzing the several judgments in para No.22 held as under:

"From the aforesaid authorities, it is limpid that the expression 'use of the vehicle' under certain circumstances can be attracted when the vehicle is stationary or static. A Division Bench of the High Court of Orissa in [Kanhei Rana and another v. Gangadhar Swain](#) and others (AIR 1993 ORI 89) while dealing with a situation where the deceased labourer after loading the truck with logs lost his life. The tribunal had categorically found

⁶ (2018)7SCC 687

that death was on account of fall of a log, when the truck was being loaded with logs. The learned Single Judge, in appeal, had concurred with the view of the tribunal by opining that the fall of the log had no nexus with the use of the vehicle not even remotely, and there was no material to show that the fall of the log was occasioned due to use of the vehicle. He had further held that the careless handling of goods being loaded on or unloaded from a vehicle had no connection to the vehicle itself. Reversing the conclusion of the learned single Judge, the Division Bench opined that the concept of movement being not intrinsically or inherently connected with the use and the term 'use' having been connotatively expanded, there can be no doubt that the same can also be extended to the arena/sphere of a claim advanced under Section 110 of the 1939 Act. Heavy onus is cast on the driver to avoid negligence while the vehicle is in use. If the term 'use' in its conceptual sweep engulfs no motion or no movement or stationariness, then by logical corollary it is made essential that the driver or for that matter any agent of the owner should be careful and non-negligent. Negligence in driving is regarded as a fact that the vehicle is in motion. But the definition of 'use' having been expanded in its broader canvas, it has to clothe in its sweep other categories of negligence. To elaborate, when a vehicle remains static, it cannot constitute that the driver is negligent because of his rash and negligent driving. On the contrary, it has to embody some other different types of negligence. Of course that would depend upon the facts and circumstances of each case. The Division Bench of the High Court went on to say that the apex Court in **Patil** (supra) was dealing with the negligence so far as it was

concerned with Section 92 of the Act, but as the language of Section 92-A and Section 110 of the old Act used the same phraseology and there is absence of any etymological distinction, the same meaning should be given to the expression under Section 110 of the old Act. The appellate Bench held that there was casual relationship with the accident which had resulted in the death of the claimant.

23. We entirely agree with the aforesaid analysis, for it is in accord with the view of the decisions of this Court.”

17. The law laid down by the Supreme Court and this Court goes to show that for fixing the liability on the owner of the vehicle only use of the vehicle is required to be established and no where it is stated that accident should occur while vehicle is in movement. In all the cases, strict liability of principle as envisaged in **Rylands v. Fletcher** was required to be followed. In the present case also, the deceased died due to injuries sustained by him while gunny bags were being loaded into the lorry bearing No.AHT 6011 fell on him and as a result, he died, which goes to show that there was use of motor vehicle in the said incident. In view of the same, I hold that the 5th respondent in the appeal, who is the owner of the vehicle, is liable to pay compensation. Though the Tribunal found that the 5th respondent herein is the owner of the vehicle,

without considering the legal principles held that the appellant is liable to pay compensation as owner of the goods.

18. In view of the same, the award of the Tribunal is liable to be set aside to the extent of fixing liability on the appellant and it is only the 5th respondent herein is liable to pay the compensation.

19. Accordingly, the appeal is allowed and the liability for paying compensation as awarded by the Tribunal is fixed on the 5th respondent herein. It is stated that as per interim direction of this Court, the appellant has deposited the amount and the same is lying in the Tribunal. Since the liability fixed on the appellant is set aside, the appellant is entitled to withdraw the said amount. As a sequel to the disposal of this appeal, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

05-03-2019
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