

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.3436 of 2005

JUDGMENT:

This appeal is filed by the appellant-Insurance Corporation against the awarding of compensation of Rs.1,50,000/- with interest @ 7.5% per annum in M.A.T.O.P.No.386 of 2000 on the file of Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC-I), Khammam (for short "the Tribunal) from 22-07-2000 i.e. the date of petition till the date of deposit against the respondents 1 to 3 being the driver, owner and insurer of the lorry respectively, jointly and severally.

The appellant herein, is the National Insurance Company Limited who is the 3rd respondent, respondents 6 and 7 were respondents 1 and 2 and respondents 1 to 5 were petitioners in the original petition.

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

The case of the petitioners before the Tribunal is that on 16-09-1999 one Dokuparthi Asheervadam boarded a lorry bearing No.ABK 145 at Wyra long with two vegetable bags in order to go to Bonakal. On the way near Madhira cross roads, at about 9.30 hours

respondent, the driver of the lorry, drove the same in a high speed in a rash and negligent manner and dashed against the stationed lorry bearing NO.ABK 2457 from its back. As a result said Asheervadam died on the spot and other passengers sustained severe injuries. A case in Cr.No.56 of 1999 for the offences punishable under Sections 304-A and 337 IPC was registered by the Bonakal Police against respondent No.1. It is also the case of the petitioners that respondent No.1 being the driver, respondent No.2 being the owner and respondent No.3 being the insurer of the lorry are liable to pay compensation to them.

Respondents 1 and 2 remained exparte, respondent No.3 filed counter denying the allegations in the petition including accident, income of the deceased etc. and called upon the petitioner to prove that at the time of accident, respondent No.1/driver of the lorry was having valid driving licence and permit to ply and was insured with it.

On the basis of above pleadings, the following issues were settled for trial:

1. Whether deceased Dokuparthi Asheervadam died due to rash and negligent driving of lorry bearing No.ABK 145, driven by its driver-R1?

2. Whether the petitioners are entitled to any compensation? If so to what amount and from which of the respondents?
3. To What relief?

The Tribunal after considering the evidence of PW.1 and Exs A-1 to A-3, RW.1 and Ex.B.1 awarded compensation of Rs.1,50,000/- fixing the liability of respondents 1 to 3 jointly and severally.

Learned counsel for the appellant submits that deceased was travelling in the crime vehicle as an unauthorized passenger and he is not covered by the policy. In spite of the same, the Tribunal erroneously fixed the liability on the appellant-Insurance Company. He also submits that the compensation granted by the Tribunal is on higher side. Instead of fixing the entire liability on the owner of the vehicle, the Tribunal has directed the appellant-Insurance Company to pay and then recover from respondent No.2, owner of the vehicle.

Heard Sri G.V.L. Narasimha Rao, learned counsel for respondents 1 to 5.

In this case while fixing the liability, the Tribunal relied on the judgments of Supreme Court in **National Insurance Company Limited v. Baljit Kaur¹** and

¹ (2004) S.L.T. 269=1 (2004) ACC 259 (S.C.)

Oriental Insurance Company Limited v. Nanjappan²

and directed the appellant-Insurance Company to pay and recover from the owner of the crime vehicle. Learned counsel for the petitioners stated that the owner of the crime vehicle has not filed any appeal against the award of the Tribunal, insofar as the quantum of compensation is concerned.

In view of the same, I do not see any reason to interfere with the award of the compensation granted by the Tribunal and also the liability fastened on the appellant.

Having regard to the above, the appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A.RAJASHEKER REDDY,J

11-02-2019

Nvl

² 1 (2004) ACC 529 S.C