

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.Nos.4617, 4626 and 4627 OF 2004

COMMON JUDGMENT:

Since all these appeals arise out of the common order, dated 12.08.2004, in so far as they relate to O.P.Nos.243, 244 and 246 of 2000, passed by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Ranga Reddy District, (for short, the Tribunal), they are being disposed of by this common judgment.

2. All the appeals are filed by the Insurance Company aggrieved by the common order passed by the Tribunal to the effect that it is not liable to pay the compensation as the tractor was used in gross violation of the terms and conditions of the policy.

3. For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in the O.P.

4. The common case of the petitioners is that on 11.01.2000, the petitioners, being labourers, were travelling in a Tractor bearing No.AP 28 T 30 and Trolley bearing No.AP 28 T 31, belonging to the first respondent from Yetla Erravally Village to Sardarnagar Village carrying rice bags. At about 11.00 AM, near agricultural farm at Tallapally Village, the driver of the tractor drove it in a rash and negligent manner and on account of which, it turned turtle and all of them suffered serious injuries and they were shifted to Osmania General hospital, Hyderabad, for treatment. While undergoing treatment, one of the labourers died.

5. The owner of the tractor remained *ex parte*. The Insurance Company filed a counter denying the allegations as to age, occupation and income of the petitioners and dependency of the legal heirs of the deceased and the amounts spent by them for their treatment. The tractor was not road-worthy to ply and the driver had also not produced his driving licence. It was stated that as the compensation claimed by the petitioners is excessive, it does not liable to pay the same and prayed to dismiss the claim petitions.

6. Taking into consideration the pleadings and also the arguments advanced, and 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 tractor and awarded compensation with interest at the rate of 9% per annum, affixing the liability jointly and severally on the owner as well as the insurer. The Award was apportioned under various Heads. Aggrieved by the fastening of liability on the insurance company, the Insurance Company filed the present appeals.

7. Learned counsel for the appellant submits that the tractor-trolley is only meant for agricultural purpose and admittedly the tractor was used for commercial purpose and there is gross violation of the terms and conditions of policy and as per the policy, the driver and two coolies only can travel, whereas in the instant case, admittedly, six coolies were traveling in the trolley, and therefore, the insurance company is not liable to pay any compensation and sought to set aside the Award of the Tribunal.

8. Learned counsel for the claimants in these appeals, submits that the Tribunal passed a well reasoned order which needs no interference. He further submits that though the claimants travelled in the tractor as unauthorized passengers, the liability of the insurance company cannot be exonerated and hence, the Tribunal has rightly passed the Award, and the same does not need any interference. He further contended that even, for the sake of argument, the liability of insurance company is exonerated, the insurance company is still liable to pay the claimant at the first instance and then recover the same from the owner of the vehicle. To support his contention, the learned counsel placed reliance upon a decision of the Hon'ble Supreme Court in *Manuara Khatun Vs. Rajesh Kr. Singh*¹.

9. In *Manuara Khatun's* case (supra), the Hon'ble Supreme Court dealt with the case of gratuitous passengers and held that the claimants are entitled for an order against the insurer to pay the awarded sum to the claimants and then to recover the said amount from the insured.

10. Having considered the rival contentions, it is not in dispute that the tractor-trolley in question was used for agricultural purpose; and at the time of accident, the claimants were traveling on the tractor as gratuitous passengers, and there is no insurance coverage covering the risk of the claimants. Therefore, as the claimants travelled as gratuitous passengers in the tractor, it is just and reasonable to invoke the principle of 'pay and recover'.

¹ (2017) 4 SCC

11. In view of the foregoing discussion, the common Award of the Tribunal is modified to the extent of directing the appellant-insurance company to pay the compensation amount to the claimants in the first instance, and recover the same from the owner of the tractor thereafter.

12. As the rate of interest awarded by the Tribunal is excessive, and as the Apex Court in several decisions from time and again stating that the rate of interest should not exceed 7.5% per annum, this Court is of the view that the rate of interest is reduced to 7.5% per annum from 9% per annum, in so far as these appeals are concerned. Except the above said modification, the Award of the Tribunal shall remain unchanged.

13. The Civil Miscellaneous Appeals are partly allowed to the extent indicated above. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

Date:08.11.2019

GJ

T.AMARNATH GOUD, J