

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.909 OF 2008

JUDGMENT:

This appeal is preferred by the appellant/3rd respondent questioning the order of the Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC-I), at Khammam (for short, the Tribunal) in M.A.T.O.P.No.148 of 2002 dated 16.03.2006.

2. The brief facts of the case are that on 26.12.2001 the deceased-Naganaboina Kondala Rao boarded the tractor bearing No.AP 20F 997 and trailer bearing No.AP 20F 998 which was carrying C.P.M. party workers to Wyra. The deceased was going to his in-laws village at Somavaram. On the way, at Somavaram the tractor was stopped. While the deceased was getting down from the tractor, the 5th respondent, who is the driver of the tractor, drove the same in rash and negligent manner. As a result, the deceased fell down and the tyres of the trailer ran over him and he sustained fatal injuries. He was admitted in the hospital of Dr.Srinivasa Rao at Wyra. But the deceased succumbed to the injuries. On a report, a case in Crime No.124 of 2001 under Section 304-A IPC was registered against the 5th respondent. The respondents 1 to 4/claimants submitted that the 5th respondent, being the driver, the 6th respondent, being the owner, and the 3rd respondent, being the insurer of the tractor, are liable to pay compensation to them. The respondents 1 to 4/claimants claimed a compensation of Rs.3,00,000/-.

3. In the claim petition, respondents 5 & 6 remained *ex parte*. The 3rd respondent filed counter denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

4. 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 crime vehicle and awarded total compensation of Rs.2,36,000/- with interest at the rate of 7.5% per annum. Aggrieved by the said order, the appellant/3rd respondent/insurance company filed the present appeal.

5. Heard.

6. 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.3,00,000/-, the Tribunal awarded an amount of Rs.2,36,000/- with interest @ 7.5% per annum. The specific finding given by the Tribunal is that there is a burden of payment of compensation on the 5th respondent-driver in the O.P. and the 6th respondent-owner has no valid driving licence and the deceased was the passenger, who unauthorizedly boarded the goods vehicle and in the process of getting down from the tractor, the wheel of the tractor went above the body of the deceased due to which the deceased fell on the ground and he died and thus, the appellant/insurance company is not liable to pay the

compensation. The Court below has given a specific finding that the deceased would not have died by felling down from the tractor, but rather he died when the tyres of the tractor ran over him. At that time, the deceased was on the road. So, he was not a passenger of the tractor. Thus, respondents 1 to 4/claimants are entitled for compensation and the appellant/insurance company is liable to pay the same.

7. Learned counsel for the respondents placed reliance on a decision of this Court reported in **New India Assurance Company Limited v. Voggani Chinna Venkataiah**¹, wherein it is held as follows:

“15. IN M.A.C.M.A. No. 87 of 2007, a learned single Judge of this Court held as under:

“It is important to keep it in mind that the moment he fell down he lost the character of unauthorized passenger of the goods lorry and became third party and later only he was run over. Once he is a third party to the vehicle, there is a statutory liability to the third party under Section 147 read with Section 149 from the policy in force read with Section 168 of the Act for the insurer to indemnify.”

16. IN view of the judgments referred to above, the deceased has to be treated as a third party and since the insurance policy was in force at the time of the accident, I am of the view that the order of the Tribunal in directing the insurance company to pay the amount and recover the same from the owner of the vehicle warrants no interference, and the appeal is liable to be dismissed.”

¹ ALT 2015 3 103

Therefore, I see no reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

8. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand dismissed.

T.AMARNATH GOUD, J

Date: 24th June, 2019

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