

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**C.M.A. NO.3052 OF 2004**

**JUDGMENT:**

This appeal is preferred by the appellant-insurance company, questioning the Order and Decree of the Motor Accident Claims Tribunal-cum-XIV Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal) in O.P.No.827 of 2003, dated 16.04.2004.

2. The brief facts of the case are that respondent No.1 is the wife and respondent No.2 is the son of the deceased Gujjala Anjaiah. On 26.01.2003, the deceased and some others loaded hay-stock in Maisigandi village and traveling in the tractor-trailor bearing No.AP22E 5423/5525 as laboureers to unload the hay-stock and when the vehicle reached Urukondapet Hanuman Temple near Pilligundu, the driver of the tractor drove the same in a rash and negligent manner, as a result of which, the deceased fell down from the tractor and the tractor ran over his head, causing his instantaneous death. The respondents filed the aforesaid MVOP against owner of the tractor (respondent No.3 herein) and insurer (appellant herein), claiming compensation of Rs.3,00,000/- for the death of the deceased.

3. Before the Tribunal, owner of the tractor, remained *ex parte*. The appellant-Insurance Company filed its counter denying the allegations and contended that the amount claimed is highly excessive and that it is not liable to pay the 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 tractor and awarded total compensation of Rs.2,49,500/- under various heads, with interest at the rate of 9% per annum, and directed the owner of the tractor (respondent No.3 herein) and the appellant-insurance company to pay the compensation jointly and severally. The Tribunal observed that even if the deceased was a gratuitous passenger in the vehicle, the insurance company has to pay the compensation to the claimants and recover the same from the owner of the vehicle later. Aggrieved by the said order, the appellant-insurance company filed the present appeal.

5. Heard.

6. Sri E.Venugopal Reddy, learned counsel appearing for the appellant-insurance company submitted that the deceased traveled in the tractor as a gratuitous passenger and died due to his own negligence and therefore, the insurance company is not liable to pay any compensation to the claimants.

7. A perusal of the record reveals that the Tribunal has passed the award, fixing the liability of the owner and insurer of the tractor jointly and severally. The Apex Court in **Anu Bhanvara V. Iffco Tokio General Insurance Company Limited**<sup>1</sup> held that the principle of “pay and recover” should be directed to be invoked and insurance company shall be liable to pay the awarded compensation to the claimants, however, the insurance company shall have the right to realize the said amount of compensation

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<sup>1</sup> LAWS (sc) 2019 8 40

from the driver and owner of the vehicle in accordance with law. In view of the settled law rendered by the Apex Court in the above decision, this Court is of the opinion that the Tribunal has passed a well reasoned order and there are no grounds to interfere with the same.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

**T.AMARNATH GOUD, J**

Date: 21-10-2019.  
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