

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. NO.2585 OF 2003

JUDGMENT:

This appeal is preferred by the appellant-insurance company, questioning the Order and Decree of the Motor Accident Claims Tribunal-cum-District Judge, Adilabad (for short, the Tribunal) in O.P.No.382 of 2000, dated 27.02.2003.

2. The brief facts of the case are that respondent No.1 is the wife, respondent No.2 is the minor son, respondent No.3 is the father and respondent No.4 is the mother of the deceased Neerati Satyanarayana @ Sathaiah. On 10.01.2000, while the deceased who is a driver of the Ambulance van bearing No.AP10T 8779, going from Hyderabad to Jaipur with a dead body of one Avule Rajaiah, and when the van reached the outskirts of Karimnagar District, near micro station, the said van dashed the stationed lorry from its back side. In the said accident, the deceased sustained fracture of skull and other bleeding injuries all over his body and died on the spot. The respondents filed the aforesaid MVOP against owner of the van (respondent No.5 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 van, 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 van i.e., the deceased and awarded total compensation of Rs.2,65,500/- under various heads, with interest at the rate of 9% per annum, and directed the owner of the van (respondent No.5 herein) and the appellant-insurance company to pay the compensation jointly and severally. 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 Tribunal failed to come to the conclusion that the claim made by the claimants is not maintainable under Motor Vehicles Act and also they are entitled for the compensation under Workmen Compensation Act. He further submitted that the compensation awarded by the Tribunal for the death of the deceased-driver for his own negligence is exorbitant and therefore prayed to allow the appeal by setting aside the order passed by the Tribunal. In support of his arguments, he relied on a decision reported in **Rani V. Shyamsunder Mandhani**¹.

7. Sri S.Surender Reddy, learned counsel appearing for respondent Nos.1 to 4 submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. It is contended on behalf of the appellant-insurance company that the deceased was the driver of the Ambulance van and that the

¹ LAWS (APH) 2014 3 163

accident took place on account of the rash and negligent driving of the deceased, and therefore, the respondents are not entitled to claim compensation under Motor Vehicles Act and at the most they are entitled to claim compensation under Workmen Compensation Act. The learned Single Judge of this Court by following the principles of law laid down in **National Insurance Co.Ltd. V. Prembai Patel**² and **Ramachandra V. Regional Manager, United India Insurance Co.Ltd**³, held in Shyamsunder Mandhani's case (supra) that *"when the driver of the vehicle, i.e., the deceased met with death in the course of employment, the factum of accident whether due to his negligence is immaterial and the claimants can choose or the Tribunal can consider to take the claim under Section 167 read with Section 163-A of Motor Vehicles Act to restrict the liability of the insurer to the extent of Workmen Compensation Act."*

9. It is contended by the learned counsel appearing for the respondent Nos.1 to 4 that the owner of the van paid extra premium to cover the risk of the driver and therefore, the respondents are entitled claim compensation under Motor Vehicles Act. The Apex Court in Prembai Patel's case (supra), held that *"the liability of the appellant-insurance company to satisfy the award would be restricted to that arising under the Workmen's Act and that the owner of the vehicle would be liable to satisfy the remaining portion of the award."*

10. The Tribunal has passed the award, fixing the liability of the owner and insurer of the van jointly and severally. But, in the light of the above settled proposition of law laid down by the Apex Court,

² 2005 6 SCC 172

³ 2013 6 SCJ 743

the liability of the appellant-insurance company is limited to the extent of paying compensation under Workmen Compensation Act and owner of the vehicle would be liable to satisfy the remaining portion of the award. Except the above modification, the award passed by the Tribunal remains unchanged.

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

Date: 13-09-2019
Shr

T.AMARNATH GOUD, J

