

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1876 OF 2013

JUDGMENT:

This appeal is filed by the appellant/3rd respondent/insurance company aggrieved by the order and decree dated 13.06.2013 passed in M.V.O.P.No.778 of 2006 by the Motor Accidents Claims Tribunal (Judge, Family Court-cum-Additional District Judge), At Khammam (for short, the Tribunal).

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

3. The brief facts of the case are that the petitioner is the brother of deceased sister-V.Divya. On 10.04.2004, the petitioner along with his father V.Shivarama Krishna Prasad, mother V.Usha Rani and sister Divya was returning from Vatsavai Village to Khammam on a motorcycle bearing No.AP 09 AB 551 and when they reached after crossing bus stand at Tirlapuram at about 8.00 p.m., one hired bus of APSRTC bearing No.AP 16X 6672, driven by the 1st respondent in opposite direction in a rash and negligent manner came and the driver having lost the control over the vehicle dashed against the motorcycle. As a result of which, the bus ran over on the mother, father and sister of the petitioner and all of them died instantaneously. On account of untimely death of

the said deceased persons, the petitioner has become orphan at early age of 8 years and he is taken to the fold of his maternal grandmother. The 1st respondent is the driver, 2nd respondent is the owner, 3rd respondent is the insurer of the offending bus and the 4th respondent has taken the offending bus on hire. Hence, the petitioner filed the claim petition claiming compensation of Rs.1,00,000/-, payable by all the respondents jointly and severally.

4. Before the Tribunal, the petition against respondents 1 & 2 was dismissed for non-deposit of process to issue summons. Respondents 3 & 4 filed separate counters denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.W.1 and R.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-4 and Exs.B-1 & B-2, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the crime bus by the 1st respondent causing death of the deceased-Divya and awarded total compensation of Rs.75,000/-, i.e., Rs.50,000/- towards loss of love and affection and Rs.25,000/- towards pain & suffering, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by the 3rd respondent/insurance company. The petition against the respondents 1 & 2 was

dismissed for non-deposit of process and the petition against the 4th respondent was dismissed as the 4th respondent is not liable to pay compensation. Aggrieved by the same, the appellant/3rd respondent/insurance company filed the present appeal.

6. Heard Sri Nisaruddin Ahmed Jeddy, learned standing counsel for the appellant/3rd respondent/insurance company, Sri Nageswara Rao Repakula, learned counsel for the 1st respondent and Sri B.Mayur Reddy, learned standing counsel for the 4th respondent. Perused the material record.

7. Sri Nisaruddin Ahmed Jeddy, learned standing counsel for the appellant/3rd respondent/insurance company, contended that unless the owner and driver of the crime vehicle are held responsible for causing the accident due to rash and negligent driving of the crime vehicle, which is an important requirement under Section 166 of the Motor Vehicles Act, fastening the liability upon the insurer is not possible and he placed reliance on a decision reported in **Oriental Insurance Co. Ltd., v. Sunita Rathi and others**¹, wherein the Apex Court has categorically held that unless the owner of the vehicle is held responsible, the insurance company cannot be held liable for paying the compensation.

8. It is seen from the record that for non-deposit of the process fee, the respondents 1 & 2 were not heard and the

¹ AIR 1998 SUPREME COURT 257

Tribunal has proceeded in awarding the compensation by fastening the liability on the 3rd respondent/insurance company. In this background, this Court feels that the beneficial legislation cannot be denied to the claimant, but for the technical latches said to have been committed by the counsel. In view of the above, the award passed by the Tribunal is liable to be set aside and the matter has to be remanded back to the Tribunal to give an opportunity to the claimant and to proceed with the matter by complying the required formalities.

9. Accordingly, the M.A.C.M.A. is allowed setting aside the order and decree dated 13.06.2013 in M.V.O.P.No.778 of 2006 passed by the Tribunal and remanding the matter to the Tribunal to proceed with the matter by complying the required formalities by giving an opportunity to the claimant and dispose of the said M.V.O.P. on merits, as expeditiously as possible, since the matter pertains to the year 2006, after giving reasonable opportunity to both sides. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25th October, 2019

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