

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1631 OF 2016

JUDGMENT:

This appeal is filed by the appellant-2nd respondent-insurance company aggrieved by the Judgment and decree dated 04.02.2016 passed in M.V.O.P.No.125 of 2010 by the XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad (for short, Court below).

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

3. The brief facts of the case are that the petitioners are the parents of the deceased-Paladugu Srinivas. On 02.01.2010 at about 7:30 PM while the deceased along with pillion rider were proceeding on motorcycle bearing No.AP 28AY 3521 towards Patancheru to attend his personal work and when they reached near Patancheru police station on NH.No.9, a lorry bearing No.NL-01-D-4269, driven by its driver, came at high speed in a rash and negligent manner and hit the deceased motor cycle from backside, as a result of which, the deceased fell down on the road and the crime lorry ran over the body of the deceased, due to which the deceased died on the spot. Prior to the date of the accident, the deceased was a businessman by profession and he used to earn Rs.12,000/- per month. The deceased was only earning

member in the family. The accident had occurred due to rash and negligent driving of driver of the crime lorry. Therefore, the petitioners are claiming compensation of Rs.12,00,000/-, payable by both the respondents, being the owner and insurer of the offending lorry.

4. Before the Court below, respondent No.1 remained *ex parte*. Respondent No.2 filed its counter 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.Ws.1 & 2 and R.W.1 and documentary evidence of Exs.A-1 to A-6 and Exs.B-1 & B-2, the Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.9,70,000/- i.e., Rs.9,60,000/- towards loss of income, Rs.5,000/- towards loss of dependency and Rs.5,000/- towards funeral expense, with interest @ 9% per annum from the date of petition till the date of deposit, payable by both the respondents jointly and severally. Aggrieved by the said judgment, the appellant-2nd respondent-insurance company filed the present appeal.

6. Heard Sri T.Mahender Rao, learned standing counsel for the appellant/insurance company and Sri K.Ravikanth,

learned counsel for respondents 1 & 2. Perused the material record.

7. The only point which came up for consideration before this Court in the present appeal is that the appellant/insurance company is not liable to pay the compensation and no liability can be fixed.

8. The issue as to whether the insurance company is liable to pay any compensation, where the terms and conditions of policy are violated came up for consideration before the Apex Court in **NATIONAL INSURANCE COMPANY LIMITED v. SWARAN SINGH AND OTHERS**¹.

9. It is evident from para 15 of the impugned judgment that in Column No.17 of Ex.A-5, it is mentioned that the driver of the vehicle was having License No.F-091438/92 valid upto 06.09.2010 and the said license was issued by Licensing Authority of Guwahati and the accident took place on 02.01.2010. Further, R.W.1-Motorcycle Inspector of Guwahati, Assam, in his evidence, has categorically deposed and spoke about Ex.B-2-Letter issued by the District Transport Officer, Guwahati, dated 25.06.2013, which was issued from their office stating that the license number mentioned in para 15 of the impugned judgment has not been issued and in view of the same, an inference has to be drawn that the said license is a fake license.

¹ (2003) 3 SCC 297

10. In view of the above, since the offending vehicle is insured and in view of the decision of the Apex Court reported in **Shivaraj v. Rajendra**², the appellant/insurance company is directed to pay the compensation amount at the first instance and recover the same from the 3rd respondent/owner of the crime vehicle. Except the said modification, the judgment and decree passed by the Tribunal shall remain unchanged.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is disposed of directing the appellant/insurance company to pay the compensation amount of Rs.9,70,000/-, along with proportionate costs and future interest @ 9% per annum from the date of petition till the date of deposit, to respondents 1 & 2/claimants at the first instance and recover the same from the 3rd respondent/owner of the crime vehicle.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 8th January, 2020

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² 2018 AIR (SC) 4252