

THE HON'BLE SRI.JUSTICE PULLA KARTHIK

M.A.C.MA. No.2358 of 2007

JUDGMENT:

This appeal is filed by the insurance company challenging the award and decree passed in O.P.No.1094 of 2004 dated 15-12-2005 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, (FTC-1) Khammam, wherein the Tribunal allowed the petition in part and passed an award of Rs. 1,50,000/- with future interest at the rate of 7.5% therein as against the claim of Rs.2,00,000/- on account of the death of one Abbandi Dharma Rao in a motor vehicle accident that occurred on 5.5.1999.

2. The case of the claim petitioner in brief:

The petition is filed under section 166 of the Motor Vehicles Act, claiming a compensation of Rs. 2,00,000/-, on account of the death of one Abbandi Dharma Rao in a Motor Vehicle accident. The respondent No.1 is wife, respondent No.2 is the son of the deceased. On 05-05-

1999, the deceased i.e., Abbandi Dharma Rao along with others boarded a lorry bearing No.APW 2277 at Kallurigudem village in order to go to Thiruvuru for shopping. On the way, near Genesh Padu Village respondent No.3, the driver of the lorry drove the same in rash and negligent manner and as a result, the lorry turned turtle and fell into pit on the right side of the road due to which, Abbandi Dharma Rao and four others died.

3. It is pleaded that due to death of the Abbandi Dharma Rao, they lost their income and they were dependents of the deceased, and claimed that they are entitled for compensation.

4. The respondent No.3 and respondent No.4 herein remained exparte, before the Tribunal.

5. The appellant/insurance company filed its counter affidavit before the tribunal denying all the allegations of the petition including the manner of accident, age of the deceased etc., and it is pleaded that the deceased was travelling as an unauthorized passenger in the lorry, which

is a goods vehicle and the petitioners are not entitled to claim compensation.

6. Basing on the above pleadings the following issues were framed for trial by the Tribunal:

1. Whether the deceased – Abbandi Dharma Rao, died due to rash and negligent driving of the lorry bearing No.ABW 2277 by its driver/R-1?
 2. Whether the petitioners are entitled to any compensation. If so, to what amount and from which of the respondents?
 3. To what relief?
7. To substantiate their case claim petitioner No.1 herself was examined as PW1 and marked Ex's.A1 to A4.
8. On behalf of the appellants, RW1 the administrative officer, was examined and Ex.B1 insurance policy was marked.

9. On considering the material on record the Tribunal had passed an award of Rs.1,50,000/- with future interest there on at 7.5% from 17-02-2000.

10. Heard both sides and perused the record.

11. The appellant contends that the Tribunal had erred in holding that the appellant is liable to pay compensation to the petitioner and to recover the same from the owner of the vehicle, though the deceased was an unauthorised passenger to the insured vehicle.

12. In contra, respondent contends that the Tribunal had rightly passed an award after considering the oral and documentary evidence on record. It is further contended that as per the law laid down by the Hon'ble Supreme Court in *Manuara Khatun V. Rajesh KR.Singh*¹, wherein the Apex Court had given liberty to the insurer to recover the amount from the owner of the offending vehicle.

¹ 2017 45AC 796

13. This Court has taken note of the above submissions made by the respective parties.

14. The main contention of the appellant is that the driver of the lorry i.e., respondent No.3 was not having valid driving licence by the date of accident. The Hon'ble Supreme Court in a decision in between United Insurance Company Vs. Leheru and others² held that "Insurance Company cannot escape from its liability to third parties on the ground that the licence of the driver and insured vehicle found to be a faked one. Even though it is within the knowledge of the insured, the insurance company cannot escape from its liability. It may however in such cases, recovery of compensation paid by it from the insured", and it is held in *Manuara Khatun Vs. Rajesh KR. Singh* as:

In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (Respondent 3) – they being the insurer of the offending

²2003 (ALD) 20 SC

vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. Respondent 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent 1 in execution proceedings arising in this very case as per the law laid down in para 26 of saju P. Paul case quoted supra.

In Saju P.Paul case also having held that the victim was “gratuitous passenger”, this Court issued directions against the insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the insured in the same proceedings.

15. In view of the above this Court does not see any error in the order of the Tribunal, hence the appeal is liable to be dismissed.

16. Accordingly, Motor Accidents Civil Miscellaneous Appeal is dismissed as devoid of merits. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE PULLA KARTHIK

Date: 29-10-2022
ASR