

HON'BLE SRI JUSTICE T. AMARNATH GOUD

MA.CMA.NO: 154 OF 2014

JUDGMENT:

This appeal arising out of the award and decree dated 29-03-2007 passed in MVOP.No. 140 of 2003 by the Motor Accidents Claims Tribunal-cum-II-Additional District Judge, Kadapa at Prodatur [for short "*The Tribunal*").

2. The appellant Nos. 1 to 3, who are the parents and sister of the deceased, Adiboyina kChandrasekhar, who died in a motor accident that occurred on 15-8-2000 at 08-00 p.m. near Basapuram colony, Badevel-Mydukur road due to rash and negligent driving of the lorry bearing No. ATA-2162 by its driver.

3. The brief facts of the case are that on 15-8-2000 at about 08:00 p.m., near Basapuram colony due to the negligent driving of the lorry bearing No. ATA-2162 by its driver. The deceased Chandrasekhar and others were traveling as coolies in the said lorry of the first respondent for the purpose of loading cotton. Near Basapuram colony the said lorry turned towards right side of the road and the lorry went off the road and fell into a ditch and thereby causing injuries to Chandrasekhar and others in the accident. The injured Chandrasekhar took treatment in Government Hospital at Proddatur and Kurnool from 16-8-2000 to 05-11-2000. After discharge, the deceased took treatment in Ruia Hospital, Tirupati and from Dr.N. Rangasimha at Mydukur till his death on 25-10-2001. The injured Chandrasekhar spent huge

amount towards treatment. Hence, the petitioners-claimants, who are the parents and sister of the deceased, Chandrasekhar filed a claim-petition under section 166 of the Motor Vehicles Act, seeking compensation of Rs.4,00,000/- for the death of the deceased Chandrasekhar from the respondents 1 and 2.

3. Before the Tribunal, the first respondent remained ex-parte. The second respondent filed a counter denying the averments of the claim-petition and averred that the deceased did not die due to the injuries sustained in the accident. The deceased was not a worker, earning Rs.100/- per day. The deceased was a minor boy, who was traveling as un-authorised passenger and as such the second respondent is not liable. It is further averred that the second respondent is entitled to take defence under section 170 of the Motor Vehicles Act and prayed to dismiss the claim-petition.

5. On the basis of the pleadings, the Tribunal framed the following issues for trial:

- i) *Whether the deceased died in a motor vehicle accident that occurred on 15-8-2000 at 08-00 p.m. due to rash and negligent driving of the driver of lorry No. ATA-2162 ?*
- ii) *Whether the petitioners are entitled for compensation, and if so, to what amount and from whom ?*
- iii) *To what relief ?*

6. To substantiate the claim, the appellants-claimants examined PWs. 1 to 3 and marked Exs.A-1 to A8. No oral and documentary evidence was let-in by the respondents.

7. On appreciation of oral and documentary evidence placed on record, the Tribunal relied the evidence of PW-3 Dr.C.N. Ranga Sinha, who issued on Ex.A-5 certified copy of death certificate to establish the fact that the death of the injured was due to the injuries sustained by him in the accident. The death occurred after one year and two months after the accident. In the absence of any postmortem examination by a competent doctor, the Tribunal held that the death was due to the injuries sustained by the injured in the accident and observed that it cannot be held that the death of the injured was due to the injuries sustained by him in the accident. To substantiate the plea, the respondent No.2 has not substantiated that the injured was traveling as un-authorised passenger in the vehicle of the first respondent at the time of accident. The second respondent contended in the counter that the injured was a minor, which was not correct. Ex.A-1 certified copy of the first information report, it was mentioned that the inmates were traveling as coolies for the trader. The Tribunal held that it cannot be said that the injured was an un-authorised passenger. Hence, the second respondent is made liable to the claim. The Tribunal also observed that the third petitioner-claimant, who is the sister of the deceased, is a dependant on her father, the first petitioner-claimant, therefore, she is not entitled to any compensation and her claim was dismissed but without costs.

8. Whereas in Ex.A-2 certified copy of wound certificate, it was mentioned that the injured suffered injuries on the back side of

the chest, abrasion of the upper-lip and loss of sensation of movements below loin. The doctor noted that the injured developed paraplegia. Further according to the doctor, the X-ray showed a fracture of the spine, therefore, the injuries were grievous in nature. As per Ex.A-4 certified copy of physical disability certificate, the Medical Board has assessed the disability at 100% and noted paraplegia, due to which the limbs of the injured were affected after the accident. The Tribunal considering the same, granted Rs.20,000/- for the fracture injury, Rs.2,000/- for sustaining two simple injuries and Rs.80,000/- towards permanent disability sustained by the injured and in the absence of medical bills and prescriptions, an amount of Rs.15,000/- was granted for the medical treatment of the injured. In the absence of any proof, loss of earning and loss of estate, the Tribunal has not granted any compensation. Hence, the Tribunal awarded a total compensation of Rs.1,15,000/- to the petitioners 1 and 2 with proportionate costs and interest @ 7.5% per annum from the date of filing of the petition till its realization.

9. The claimants 1 and 2, having dis-satisfied with the quantum of compensation awarded by the Tribunal, preferred this appeal raising various grounds in the memorandum of appeal.

10. Heard Sri K. Rathanga Pani Reddy, learned counsel for the appellants and Sri E. Venugopal Reddy, learned standing counsel for the second respondent-United India Insurance Company Limited.

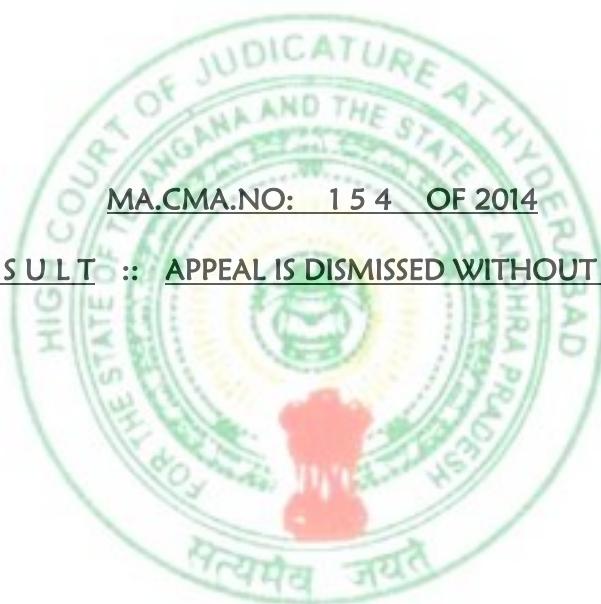
11. After hearing both sides, this Court has perused the award and decree impugned in this appeal. At the time of hearing, the learned counsel for the appellants is unable to justify the cause of death of the injured, Chandrasekhar that too after a period of 14 months due to the accident, which has been taken place on 15-8-2000 at about 08:00 p.m., near Basapuram colony on Badvel-Mydukur road, due to the rash and negligent driving of the lorry bearing No. ATA-2162 by its driver. The appellants were under a duty to establish the nexus between the accident and death of the injured. In the considered opinion of this Court, the award and decree passed by the Tribunal granting total compensation of Rs.1,17,000/- with proportionate costs and interest @ 7.5% p.a., for the fracture injury, two simple injuries and for sustaining permanent disability due to the injuries and for the medical treatment of the injured, does not call for interference of this Court. In the absence of any proof, the Tribunal has rightly rejected to grant any compensation under the head of loss of earning and loss of estate. Hence, this appeal is devoid of merit and the same is accordingly dismissed.

12. In the result, this appeal is dismissed without costs.

13. As a sequel, miscellaneous applications if any, pending in this appeal shall stand closed.

JUSTICE T. AMARNATH GOUD

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[RESULT :: APPEAL IS DISMISSED WITHOUT COSTS]

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