HON'BLE SRI JUSTICE M. GANGA RAO

MACMA.No.1094 of 2006

JUDGMENT:

The appellant-National Insurance Company Limited filed this appeal against the award and decree dated 02.01.2006 passed in MVOP.No.224 of 2002 by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Chittoor, granting compensation of Rs.2,38,500/- against the claim of Rs.3,00,000/- for the death of one J. Chandramouli (hereinafter referred to as 'the deceased') in the motor vehicle accident occurred on 11/12.05.2002.

The respondents 1 and 2/claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 being the mother and younger brother of the deceased, alleging that on 11/12.05.2002 at 2.00 a.m. while the deceased was traveling in the tractor bearing No.AP-26-T-3056 as a loading and unloading labour and when the vehicle reached near Cheelepalli petrol bunk on Chittoor-Vellore main road, its driver drove the offending vehicle in a rash and negligent manner without taking any due care and caution and lost control over it and dashed against a wall, as a result of which the deceased sustained bleeding injuries and died on the spot. The Station House Officer, Gudipala Police Station registered the same as a case in Crime No.26 of 2002 under Section 304-A IPC against the driver of the offending tractor.

It is further alleged that at the time of accident, the deceased was aged about 27 years and earning Rs.100/- per day as a labour for loading and unloading and was hale and healthy. The deceased was the sole breadwinner of his family and due to the sudden

demise of the deceased, the claimants suffered mental agony and shock.

The 3rd respondent filed counter denying the averments of the claim petition and contended that the offending tractor was validly insured with the appellant as on the date of accident and that the said policy was in force covering third party risks.

The appellant contested the claim denying the averments of the claim petition and contended that the owner of the offending vehicle violated the conditions of the policy by allowing the deceased to travel in his tractor and that the claim of the claimants is highly excessive, exorbitant and imaginary.

Based on the pleadings, the Tribunal framed the following issues.

1) Whether the accident occurred due to the rash and negligent driving of the 1st respondent's tractor by its driver?
2) Whether the petitioners are entitled to compensation for the death of Chadramouli and if so, to what extent and from whom?
3) To what relief?

During the course of trial, the 1st claimant herself was examined as PW.1 and also examined one Kannan Murthy, an ey-witness to the accident as PW.2 and got marked Exs.A.1 to A.6. On the other hand, the 3rd respondent-owner of the offending tractor was examined as RW.1 and one S. Vijaya Kumar-Officer of the appellant's company was examined as RW.2 and got marked Exs.B.1 and B.2 on behalf of the respondents.

The Tribunal, based on the evidence of PW.2, who is an eye-witness to the occurrence of the accident, coupled with Exs.A.1 and considering the fact that the appellant did not dispute the accident in its counter, held that the accident occurred due to rash and negligent driving of the 3rd respondent's tractor by its driver. This court finds that the finding of the Tribunal could not be found fault with as there is no contrary evidence available on record.

The Tribunal, based on the evidence of PW.1-mother of the deceased and Exs.A.3 and A.4-certified copies of inquest report and post mortem certificate of the deceased, had taken the age of the deceased was 27 years as on the date of accident. As the deceased was unmarried, the average age of the parents of the deceased was taken to arrive the appropriate multiplier and fixed the income of the deceased as Rs.75/- per day and Rs.2,250/- per month. After deducting 1/3rd towards personal expenses, contribution to the family members was taken as Rs.1,500/- per month and the annual contribution as Rs.18,000/-. Therefore, the compensation towards loss of dependency was arrived at Rs.2,34,000/- (Rs.18,000/- X multiplier '13'). The Tribunal held that the compensation payable to the claimants as per the Second Schedule of Section 163-A of the Motor Vehicles Act would be Rs.2,34,000/-. In addition to the above, the Tribunal granted Rs.2500/- towards loss of estate and Rs.2500/- towards funeral expenses as incorporated in the Second Schedule. The Tribunal, in total, granted Rs.2,38,500/- towards compensation payable by the appellant and the 3rd respondent-owner of the

offending tractor jointly and severally, against which the present appeal is preferred by the insurance company.

Sri Katta Laxmi Prasad, learned counsel for the appellant would contend that the deceased being a loading and unloading coolie is not covered under the policy of the tractor and trailor which are covered under the act policy. The policy covers only in respect of third party claimants. Under the policy, the risk of the driver is covered as the premium of Rs.15.00 was paid to cover the driver alone and admittedly no premium is paid to other employees much less for a cooli, and therefore, the deceased was not covered under the policy. The Tribunal grossly erred in fastening the liability on the insurance company. She further contend that granting of 9% interest against 7.5% interest per annum is contrary to the judgment of the Supreme Court reported in 2005 ACJ 1441 SC and that it is a collusive claim and hence, the award is liable to be set aside.

Learned counsel for the respondents-claimants would contend that the Tribunal rightly held that the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle and dashed against a wall as a result of which the deceased Chandramouli sustained grievous injury and succumbed on the spot. The Tribunal, based on the evidence of RW.1, owner of the tractor and trailor, who deposed that the deceased Chandramouli was working as labour for the purpose of loading and unloading of stone slabs etc., and he paid premium in respect of the employees working under him and that the 2nd respondent is vicariously liable to

indemnify the compensation payable to the petitioners. During the course of cross-examination, RW.1 nothing contra is elicited from the evidence of RW.1. RW.2, who was examined in support of the appellant insurance company states that Ex.B.1 is the policy and Ex.B.2 is the copy of the terms and conditions of the policy. According to RW.1 the tractor and trailor was validly insured with the 2nd respondent and RW.2 also admitted the owner of the tractor paid premium for the tractor and also for the trailor and states that Rs.15/- was paid premium against the risk of the employees. The Tribunal rightly held that the offending vehicle is validly insured with the 2nd respondent and the same was in force at the time of accident and covers the risk of the employees. The Tribunal, based on the evidence, came to the conclusion that the deceased used to earn Rs.75/- per day and income of the deceased was fixed at Rs.2,250/- per month. After deducting 1/3rd towards personal expenses, the contribution to the family members should come to Rs.1500/- and the only contribution to the family members was arrived at Rs.18,000/- and the multiplier of '13' is applied taking into consideration the age of the mother as the father was predeceased and the loss of dependency was also arrived at Rs.2,34,000/-. The compensation awarded by the Tribunal could not be said to be excessive and higher side. The Tribunal granted 9% interest based on the prevailing bank interest and it is according to Section 171 of Motor Vehicles Act.

In the facts and circumstances of the case and the submissions of the counsel and on perusal of the record, this court found that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle due to which the deceased died. The offending vehicle is covered by the policy Ex.B.1 and B.2 and as per the evidence of RW.1 and RW.2, it can safely be concluded that the policy covers the risk of the coolie, who worked in the offending vehicle of tractor and trailor and RW.1 paid Rs.15/- to cover the risk of the coolies traveling in the tractor and trailor. Hence, the contentions of the learned counsel for the appellant are contrary to the evidence available on record, and they are untenable. As per the judgment of the Hon'ble Supreme Court rendered in the case of ***'National Insurance Company Limited vs. Pranay Sethi & others***[1], the compensation awarded under the head of funeral expenses and loss of estate needs to be enhanced. But the appeal is filed by the insurance company. Hence, the 9% interest granted by the Tribunal could not be said to be on higher side as the Tribunal taking into consideration the prevailing bank interest rates has granted 9% interest and the same could not be found to be contrary to the provisions of Section 171 of the Motor Vehicles Act. The appellant insurance company is not entitled to file this appeal on merits of the claim which was awarded by the Tribunal in the absence of statutory permission under Section 170 of the Motor Vehicles Act to contest the matter on merits as held by the Hon'ble

[1] 2017 ACJ 2700

Supreme Court in the case of **Shankarayya and another v. United India Insurance Co. Ltd.,**[2]**.**

In view of the above discussion, this court find that there is no illegality or irregularity warranting interference of this court in the award passed by the Tribunal. Accordingly, the appeal is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M. GANGA RAO, J

Date: 12-02-2019

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[2] 1998 ACJ 513