



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 244 OF 2016

Between:

1. A DURGA, E.GODAVARI DIST & 2 OTHERS W/o Late Durgarao @
Durga, Hindu, Aged: 24 years, House wife,
R/o: Murari village, Gandepalli Mandal, East Godavari District.
2. Akula Gurunadham S/o Late Appalaswamy, Hindu, aged: 58 years,
R/o: Murari village, Gandepalli Mandal, East Godavari District.
3. Akula Krishnaveni W/o. Gurunadham, Hindu, aged: 55 years,
R/o: Murari village, Gandepalli Mandal,
East Godavari District.

...PETITIONER(S)

AND:

1. M V BHASKARA RAO, E.GODAVARI DIST & 2 OTHERS S/o Rajarao,
Hindu, aged: 36 years,
Occ: Driver of the Tractor & Trailer no.
AP 05 BT 5947, AP 05 AB 5937,
R/o: D.No.1-212, Dosakayalapalli,
Korukonda Mandal, East Godavari District.
4. Sunkavilli Satyanarayana S/o. Sanyasi Rao, Hindu, aged: 45 years,
Occ: Owner of the Tractor & Trailer no. AP 05 BT 5947, AP 05 AB 5937,
R/o: D.No.7-13/3, Main Road, Murari
Gandepalli Mandal; East Godavari District.
5. The Oriental Insurance Company Limited, Rept. By its Divisional
Manager,
Rajamundry, East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): T D PANI KUMAR

Counsel for the Respondents: K ASHOK RAMARAO

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No.244 OF 2016

Between:

1. Akula Durga, W/o.Late Durgarao @ Durga,
Hindu, Aged 24 years, House wife,
R/o.Murari Village, Gandepudi Mandal,
East Godavari District.
2. Akula Gurunadham, S/o.Late Appalaswamy,
Hindu, Aged 58 years,
R/o.Murari Village, Gandepudi Mandal,
East Godavari District.
3. Akula Krishnaveni, W/o.Gurunadham,
Hindu, Aged 55 years, House wife,
R/o.Murari Village, Gandepudi Mandal,
East Godavari District.

....Appellants/ Claim Petitioners

Versus

1. M.Veera Bhaskara Rao, S/o.Rajaroo,
Hindu, Aged 36 years,
Driver of Tractor & Trailer AP 05 BT 5947,
AP 05 AB 5937, R/o.D.No.1-212,
Dosakayalapalli Village, Korukonda Mandal,
East Godavari District.
2. Sunkavilli Satyanarayana, S/o.Sanyasi Rao,
Hindu, Aged 45 years,
Onwer of Tractor & Trailer AP 05 BT 5947,
AP 05 AB 5937, R/o.D.No.7-13/3, Main Road,
Murari Village, Gandepudi Mandal,
East Godavari District.



3. The Oriental Insurance Company Limited,
Rep. by its Divisional Manager,
Rajahmundry, East Godavari District.

....Respondents/Respondents

DATE OF JUDGMENT PRONOUNCED : 18.11.2022

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the
fair copy of the Judgment? | Yes/No |

B.V.L.N.CHAKRAVARTHI, J



*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ M.A.C.M.A.No.244 OF 2016

% 18.11.2022

Between:

1. Akula Durga, W/o.Late Durgarao @ Durga,
Hindu, Aged 24 years, House wife,
R/o.Murari Village, Gandepudi Mandal,
East Godavari District.
2. Akula Gurunadham, S/o.Late Appalaswamy,
Hindu, Aged 58 years,
R/o.Murari Village, Gandepudi Mandal,
East Godavari District.
3. Akula Krishnaveni, W/o.Gurunadham,
Hindu, Aged 55 years, House wife,
R/o.Murari Village, Gandepudi Mandal,
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Dosakayalapalli Village, Korukonda Mandal,
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2. Sunkavilli Satyanarayana, S/o.Sanyasi Rao,
Hindu, Aged 45 years,
Onwer of Tractor & Trailer AP 05 BT 5947,
AP 05 AB 5937, R/o.D.No.7-13/3, Main Road,
Murari Village, Gandepudi Mandal,
East Godavari District.



3. The Oriental Insurance Company Limited,
Rep. by its Divisional Manager,
Rajahmundry, East Godavari District.

....Respondents/Respondents.

! Counsel for the Appellants : Sri T.D.Phani Kumar

**^ Counsel for the
3rd Respondent** : Sri K.Ashok Rama Rao

< Gist:

> Head Note:

? Cases referred:

- 1. 2017 (4) SCC 796**
- 2. AIR 2018 SC 4252**
- 3. 20179 (5) ALD SC 287**
- 4. 2009 ACJ 1298**

This Court made the following:



HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

M.A.C.M.A.No.244 OF 2016

JUDGMENT:

This appeal is preferred by the Appellants/claimants, challenging the award dated 02.12.2015 passed in M.V.O.P.No.9/2014 on the file of Motor Accidents Claims Tribunal-cum-Prl.District Judge, East Godavari District at Rajahmundry, wherein the Tribunal while allowing the petition against the 1st respondent/driver and 2nd respondent/owner only, awarded compensation of Rs.8,73,000/- with interest @ 8% p.a. from the date of petition, till the date of realisation to the petitioners/claimants, for the death of Akula Durga Rao @ Durga in a motor vehicle accident.

2. For the sake of convenience, the parties are arrayed as parties in the lower Court.

3. As seen from the record, originally the petitioners filed an application U/s.166 of Motor Vehicles Act, 1988 (for brevity "the Act") claiming compensation of Rs.7,00,000/- on account of the death of Akula Durga Rao @ Durga, who is the husband of the 1st petitioner, and son of petitioners No.2 and 3, in a motor vehicle accident that occurred on 04.04.2013.



4. The facts show that on 04.04.2013 at about 09.30 p.m., while the deceased Akula Durga Rao @ Durga along with others were travelling in a tractor and trailer bearing No.AP5 BT 5947 when it was proceeding towards Burugupudi, the 1st respondent, being the driver of the tractor, drove the same in a rash and negligent manner, at a high speed, lost control over the same, due to which the tractor and trailer turned turtle, and as a result, the deceased Akula Durga Rao @ Durga, who sat in the trailer fell under the tractor and died on the spot. Police registered a case in Cr.No.46/2013 for the offence punishable U/s.338 and 304-A of Indian Penal Code against the 1st respondent. The deceased was hale and healthy and was aged 25 years at the time of accident and used to earn Rs.300/- per day as jattu coolie. The 1st respondent being driver, the 2nd respondent being owner and the 3rd respondent being the insurer of tractor bearing No.AP 5 BT 5947 and trailer bearing No.AP 5 AB 5937 are jointly and severally liable to pay compensation. Due to death of the deceased, the petitioners lost their bread winner.

5. Before the Tribunal, the 3rd respondent/Oriental Insurance Company, Rajahmundry, filed a counter resisting while traversing the material averments with regard to proof of age, avocation, monthly earnings of the deceased, manner of accident, rash and negligence on



the part of the driver of the offending vehicle, and liability to pay compensation, contended that the vehicle is not a passenger carrying vehicle, and the averment that deceased was loading and unloading coolie is not correct and thereby terms of insurance policy were violated, and hence, it need not indemnify the owner. The compensation and interest claimed by the petitioners is excessive. The respondents No.1 and 2 remained exparte.

6. On the strength of the pleadings of both parties, the Tribunal framed the following issues:

1. Whether the accident arose due to rash and negligent driving of tractor and trailer bearing No.AP 5 BT 5947 & AP 5 AB 5937 by 1st respondent, resulting death of the deceased?
2. Whether the petitioners are entitled to compensation? If so, to what amount and from whom?
3. To what relief?

7. To substantiate their claim, the petitioners examined P.Ws-1 and 2 and got marked Exs.A-1 to A-5. On behalf of the 3rd respondent, R.W-1 was examined and Exs.B-1 and B-2 were marked.

8. The Tribunal, taking into consideration the evidence of P.Ws-1 and 2, coupled with Exs.A-1 to A-5, held that the accident took place due to the rash and negligent driving of the driver of the tractor and



trailer, and further, taking into consideration the evidence of P.Ws-1 and 2, corroborated by Exs.A-1 to A-5, awarded a compensation of Rs.8,73,000/- with interest @ 8% p.a. from the date of petition, till the date of realisation against the respondents 1 and 2 only, by dismissing the claim against the 3rd respondent/Insurance Company.

9. The plea of the 3rd respondent/Insurance Company is that the vehicle is not a passenger carrying vehicle, and the averment that deceased was loading and unloading coolie is not correct and thereby, terms of insurance policy were violated, and hence, it need not indemnify the owner.

10. The Tribunal considered the evidence on record, and based on the contentions of both parties, held that the accident occurred due to the rash and negligent driving of the 1st respondent/driver.

11. The Tribunal after considering the evidence of P.Ws-1 and 2 coupled with Exs.A-1 to A-5, awarded an amount of Rs.6,48,000/- towards loss of income; Rs.25,000/- towards funeral expenses; Rs.1,00,000/- towards loss of consortium; Rs.1,00,000/- towards loss of estate; total Rs.8,73,000/-.

12. After analysing the evidence available on record, the Tribunal held that the accident was occurred due to rash and negligence of the



driver. The Tribunal further held that there is no dispute of the fact that the crime vehicle was duly insured with the Insurance Company as per Ex.B-1 and Ex.B-2 copy of policies, and they are valid policies, subsisting as on the date of accident. The Tribunal further held that as per admission of Assistant Manager of the Insurance Company, who was examined as R.W-1, the deceased was travelling as jattu coolie in the tractor. He was not covered by the policies under Exs.B-1 and B-2, and therefore, no liability can be fastened to the Insurance Company, and held that the driver and owner are jointly and severally liable to pay the compensation amount, and exonerated the 3rd respondent/Insurance Company.

13. The learned counsel for appellants/claimants submitted that the Tribunal dismissed the claim against the 3rd respondent on the ground that R.W-1 deposed that the deceased was travelling as jattu coolie in the tractor, and he was not covered by the policies, and no liability can be fastened to the Insurance Company. He contended that the finding of the Tribunal that the deceased was unauthorised passenger travelling in the crime vehicle at the time of accident, is erroneous, in view of the evidence of R.W-1 that the deceased was travelling in the crime vehicle as jattu coolie at the time of accident. Even if he is not covered by the policies, the insurer has to pay compensation to the



claimants at first place, and shall recover the same from the owner of the vehicle later.

14. The learned counsel for the appellants/claimants relied upon the judgment of the Hon'ble Apex Court in the case of **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**¹, as the deceased comes under the purview of gratuitous passenger.

15. The learned counsel for 3rd respondent/Insurance Company submitted that the deceased was travelling in the crime vehicle as unauthorised passenger at the time of accident, and therefore, the Tribunal has rightly dismissed the claim against the Insurance Company, and it does not require any interference.

16. In the light of above rival contentions, the points that arise for consideration in this appeal are as under:

1. Whether the deceased come under the purview of gratuitous passenger? If so, pay and recover can be ordered against the 3rd respondent/Insurance Company?
2. Whether the Tribunal ought to have considered the earnings of the deceased as Rs.9,000/- per month?

¹ 2017 (4) SCC 796



17. **POINT No.1:** P.W-1 is the wife of the deceased. As per her evidence, the deceased along with other coolies loaded the yet grass in the tractor and trailer at Murari village, and unloaded it in Torredu village, they were returning to Murari village. When the tractor reached the place of accident near Burugupudi village, at about 09.30 p.m., the driver drove the vehicle in a rash and negligent manner and in a high speed and thereby lost control over the vehicle. As a result, the tractor and trailer turned turtle. The deceased sitting in the trailer, fell into the tractor and died on the spot. Other coolies also sustained injuries.

18. The 3rd respondent/Insurance Company in the cross-examination of P.W-1 suggested that her husband was travelling as an unauthorised passenger in the trailer, at the time of accident. It was denied by P.W-1. The Insurance Company did not suggest anything that the deceased was not travelling as a coolie for attending loading and unloading works at the time of accident.

19. P.W-2 is one of the coolies travelling in the trailer at the time of accident. As per his evidence, he along with the deceased and other coolies were travelling in the crime vehicle trailer, after attending loading and unloading of yet grass, and returning to the village. The Insurance Company in the cross-examination of P.W-2 suggested that



P.W-2 and the deceased are unauthorised passengers at the time of accident. It was denied by P.W-2. The Insurance Company did not suggest anything that they were not travelling in the trailer as coolies for attending loading and unloading of yet grass on the date of accident.

20. The Insurance Company in support of its case, examined its Assistant Manager as R.W-1. As per his evidence, at the time of accident, the deceased was travelling in the crime vehicle as an unauthorised passenger. Therefore, Exs.B-1 and B-2 copies of policies do not cover the unauthorised passengers. The terms of the policy are violated. In the cross-examination of the claimants, he admitted that the deceased and the owner of the tractor are residents of the same village, and the deceased was travelling as a jattu coolie in the crime vehicle.

21. In the light of above evidence, it is proved that the deceased and others travelled in the trailer of the crime vehicle as coolies to attend the work of loading and unloading of yet grass on the date of accident. They are returning to the village. The owner of the tractor and the deceased belongs to the same village. Therefore, it is established that they attending loading and unloading of yet grass, which is an agricultural work.



22. Ex.B-1 policy pertains to the tractor and it was in force from 28.03.2013 to mid night of 27.03.2014. Ex.B-2 is policy pertains to the trailer and it was in force from 28.03.2013 to mid night of 27.03.2014. The accident in the case was occurred on 04.04.2013. Therefore, Exs.B-1 and B-2 are in force on the date of accident.

23. Ex.B-1 shows limitations as to use of the vehicle stating that the policy covers use only under a permit within the meaning of the Motor Vehicle Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act 1988, and that use only for agricultural and forestry purposes. The policy does not cover

(1) Use for hire or reward or for racing pace making reliability trial or speed testing.

(2) Use for the carriage of passengers for hire or reward.

(3) Use whilst drawing a greater number of trailers in all than is permitted by law.

24. Ex.B-2 shows limitations as to use of the vehicle stating that the policy covers use only under a permit within the meaning of the Motor Vehicle Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act 1988.



1. Use only for carriage of passengers in accordance with the permits (Contract Carriage or Stage Carriage) issued within the meaning of the Motor Vehicles Act. The policy does not cover (1) use for organised racing pace-making reliability trial or speed testing (2) Use whilst drawing a trailer, except the towing (other than for reward) of any one disabled mechanically propelled vehicle.

2. The policy covers any use permitted by the Certificate of Insurance of the towing vehicle provided the latter is insured.

25. The Tribunal observed that the deceased was a coolie travelling in a tractor-cum-trailer, and that neither Ex.B-1 or Ex.B-2 does not cover the risk of any passenger including labourers travelling on the crime vehicle, and treated the deceased as an unauthorised passenger, and exempted the 3rd respondent from liability.

26. In the given facts and circumstances, it is observed that the deceased was admittedly on record as “jattu coolie” being carried on the crime vehicle as gratuitous passenger at the time of accident, who was not being carried as either hired or reward. Hence, the finding of the Tribunal on this aspect seems to be erroneous to the extent that the deceased was an unauthorised passenger.



27. The policy does not cover passengers carried for hire or reward. The deceased would not fall under this limitation. He did not travel in the crime vehicle for hire or reward at the time of accident, and hence, there is not enough merit in the finding of the Tribunal. It is indeed that the deceased was only a “gratuitous passenger”, unauthorised to be carried on the insurer vehicle as per policy, the Hon’ble Apex Court in the case of **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**, taking reference to the earlier judgment of the Hon’ble Supreme Court in the case of **National Insurance Company Limited. Vs. Saju P.Paul**, agreed that though the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy, but in view of the benevolent object of the Act, gave directions to the Insurance Company to pay first and recover later from the other respondents.

28. The Hon’ble Supreme Court in the case of **Shivaraj Vs. Rajendran and another** in similar circumstances and the evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor, and that thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver, and that as a result, the Insurance Company was not liable for



the loss or injuries suffered by the appellant or to indemnify the owner of the tractor.

29. The Hon'ble Supreme Court held that the conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the case. The Hon'ble Supreme Court in the case of **Shivaraj Vs. Rajendran and another**², held in para 10 as under:

“At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. Vs. Swarna Singh & Ors.¹, Mangla Ram Vs. Oriental Insurance Co. Ltd.², Rani & Ors. Vs. National Insurance Co. Ltd. & Ors.³ and including Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others.⁴ In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the 1 (2004) 3 SCC 297 2 (2018) 5 SCC 656 3 2018 (9) SCALE 310 4 (2017) 4 SCC 796 appellant with liberty to recover the same from the tractor owner (respondent No.1).”

² AIR 2018 SC 4252



30. In the case on hand, the evidence on record established that the deceased was travelling in the trailer attached to the tractor as a coolie (loader) for loading and unloading work pertaining to yet grass (dry grass), which is an agriculture product, from the fields to the village. Therefore, it is clear that the tractor was used for agriculture purpose at the time of accident. No contra evidence was adduced by the 3rd respondent/Insurance Company stating that the tractor was used for other than agriculture purpose at the time of accident, violating the terms of the insurance policy. The Tribunal did not consider these facts and simply relied on the statement of R.W-1. The trailer attached to the tractor was insured under Ex.B-2 policy, and it was in force on the date of accident. Further, as stated supra, under Ex.B-2 policy, the limitations as to use of the trailer is that it can be used only for carriage of passengers in accordance with the permits (Contract Carriage or Stage Carriage) issued within the meaning of the Motor Vehicles Act.

31. Admittedly, the deceased was travelling in the trailer as a coolie for loading and unloading of dry grass from the field to the village of the owner. Therefore, the Insurance Company may contend that the owner violated the terms of Ex.B-2 policy by carrying coolies without permit from the Transport Authorities. In that view of the matter, pay



and recovery principle can be applied in the light of Hon'ble Apex Court judgments.

32. In the light of above facts of the case on hand, and in view of the judgment of the Hon'ble Apex Court in **Shivaraj Vs. Rajendran and another**, and also in view of the benevolent object of the M.V.Act, even though the liability of the 3rd respondent/Insurance Company can be exonerated, for breach of the policy condition, still the Insurance Company is liable to pay the compensation to the claimants at the first instance, and then recover the same from the owner of offending vehicle by invoking the principle of pay and recovery as laid down by the Hon'ble Apex Court.

33. In the case on hand too, similar resemblance to the facts and circumstances exist, calling for the application of law as seen in the case noted supra. Therefore, the 3rd respondent cannot be exempted from liability fastening of such legal precedents elaborated herein.

34. In the case of **Anu Bhanvara etc., Vs. Iffco Tokyo General Insurance Company Limited**³, the Hon'ble Apex Court while dealing with the case of gratuitous passenger directed the insurer to pay the

³ 2019 (5) ALD SC 287



awarded sum to the claimant therein, and recover the same from the insured in the same proceedings.

35. In the light of above discussion, and in view of benevolent object of Motor Vehicles Act, even though the liability of the 3rd respondent/Insurance Company is exonerated, still the Insurance Company is liable to pay compensation to the claimants at the first instance, and then recover the same from the owner of the offending vehicle by invoking the principle “pay and recovery” as laid down by the Hon’ble Apex Court in the case of

1) Manuara Khatun and others Vs. Rajesh Kumar Singh and others.

2) Shivaraj Vs. Rajendran and another.

3) Anu Bhanvara etc., Vs. Iffco Tokyo General Insurance Company Limited.

Accordingly, this point is answered in favour of the appellants/claimants.

36. **POINT No.2:** The Tribunal upon considering the material on record, made guess work of notional income of deceased and fixed the same as Rs.3,000/- per month, and awarded compensation for loss of future prospects, by considering the principles laid down by the



Hon'ble Apex Court in the case of **Sarla Verma and another Vs. Delhi Road Transport Corporation and others**⁴. The Tribunal considered the age of the deceased as 25 years at the time of accident and applied multiplier 18. The contention of the appellants/claimants is that the deceased was working as jattu coolie and earning Rs.300/- per day at the time of accident, and therefore, his income ought to have fixed at Rs.9,000/- per month, instead of Rs.3,000/- per month. The appellants/claimants did not adduce any evidence to prove their contention that the deceased was earning Rs.300/- per day on the date of accident i.e., 04.04.2013. In the said circumstances, the Tribunal made guess work on notional income and fixed the same at Rs.3,000/- per month. In that view of the matter, in the absence of specific evidence, the finding of the Tribunal cannot be interfered. Accordingly, the point is answered against the appellants.

37. In the light of findings on points No.1 and 2, the appeal is liable to be allowed partly, directing the 3rd respondent/Insurance Company to pay the compensation amount at the first instance, and then recover the said amount from the 2nd respondent/owner (insured) of the crime vehicle.

⁴ 2009 ACJ 1298



38. In the result, the appeal is partly allowed, directing the 3rd respondent/Insurance Company to deposit the compensation amount along with accrued interest as awarded by the Tribunal, within one month from the date of judgment, and then recover the said amount from the 2nd respondent/owner (insured) of the crime vehicle in these very proceedings by filing execution application against the insured. The rest of the findings of the Tribunal regarding rate of interest, apportionment of compensation amount to the claimants, and payment of deficit court fee by the claimants etc., holds good. There shall be no order as to costs.

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

B.V.L.N.CHAKRAVARTHI, J

18.11.2022

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HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

M.A.C.M.A.No.244 OF 2016

Note: Mark L.R. Copy

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18th November, 2022

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