REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2247 OF 2018
(Arising out of SLP (C) NO. 5485 of 2017)

SHIVAWWA AND ANR. .... APPELLANTS

:Versus:

THE BRANCH MANAGER, NATIONAL INDIA INSURANCE CO. LTD. AND ANR. .... RESPONDENTS

J U D G M E N T

A.M. Khanwilkar, J.

1. This appeal emanates from the judgment of the High Court of Karnataka dated 9th July, 2015 in M.F.A. No.4401/2008 (MV) which had allowed the appeal filed by respondent No.1 (Insurance Company) and set aside the award of the Motor Accident Claims Tribunal (for short "the Tribunal") granting compensation to the appellants.

2. A claim petition was filed in reference to the death of one Chanabasayya Sidramayya Hiremath, son of appellant No.1 and brother of appellant No.2 herein. On 23rd January, 2001, the deceased was returning, after unloading food-grains, on tractor-trailer bearing No. KA-29/T-1651/T-1652 belonging to respondent No.2, and being driven by an employee of respondent No.2, one Mallikarjuna Beemappa Ganiger. At around 1.00 AM, it is alleged that owing to the rash and negligent driving of the said Mallikarjuna Beemappa Ganiger, the deceased fell off the tractor-trailer and suffered fatal injuries. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was subsequently filed before the Tribunal, Bagalkot, by the legal representatives of the deceased seeking compensation of Rs. 8 lakh from respondent No.1 - insurance company, respondent No.2 - owner and the driver, Mallikarjuna Beemappa Ganiger. After considering the facts and evidence on record, the Tribunal rejected the respondents' contention that the deceased had himself been negligent by standing on a tractor hook which connected the tractor and the trailer and concluded that the accident had occurred due

to the negligence of the driver of the motor vehicle. The Tribunal, thus, passed an award against the respondents, jointly and severally, to compensate the family members of the deceased with a sum of Rs.3,20,000/- (Rupees three lakh twenty thousand only) with interest at the rate of 6% per annum, from 3.7.2001 to 29.4.2003 and from 11.7.2007 till date of realisation of the award amount.

3. Aggrieved, respondent No.1 insurance company assailed the Tribunal's award before the High Court of Karnataka, contending that the deceased had not travelled along with his goods in the tractor-trailer and therefore, it could not be made liable to pay any compensation. The High Court found merit in the contention raised by respondent No.1, that the deceased was not travelling along with his goods at the time of the accident and thus held that respondent No.1 insurance company could not be saddled with any liability in that regard.

4. The appellants have challenged the impugned judgment including on the ground that the High Court failed to appreciate the evidence on record and the fact that the

deceased was the sole earning member of the family without whom, the family had no other source of income. The appellants also submit that the quantum of compensation awarded by the Tribunal was meager and unjustifiable and therefore, also seek enhancement of the Tribunal's award.

5. We have heard Mr. Sharanagouda Patil, learned counsel for the appellants and Ms. Meenakshi Midha, learned counsel for the respondents. Be it noted, the driver of the offending vehicle has not been arrayed as a party either before the High Court or before this Court and the claim of the appellants is only against respondent No.1 - Insurance Company and the respondent No.2 – owner of the vehicle.

6. The High Court has held that the insurer (respondent No.1) cannot be saddled with the liability to satisfy the award and on that finding, allowed the appeal preferred by respondent No.1. The reason which weighed with the High Court for arriving at that conclusion, as can be discerned from the impugned judgment, is based on the selective reading of evidence of PW-2 (eye-witness) who had stated that the

deceased was standing on the hook connecting the tractor and trailer and the deceased fell down due to rash driving of the tractor, which ran over his head and chest. The High Court has also selectively adverted to the evidence of PW-1, mother of the deceased and opined that even her evidence was to the same effect. Additionally, she has stated that the deceased was studying in B.A. and running a Pan-Beedi shop. After so noting, the High Court jumped to a conclusion that a combined reading of the evidence of these witnesses leads to an inference that the victim was not travelling with his goods at the time of accident which occurred at about 01.00 Hours in the night. On recording this opinion, the High Court absolved the insurer. The analysis by the High Court is in the following words:

> "6. Per contra, learned counsel for the respondents strongly relies on the evidence of P.W.2 and contends that P.W.2 is an eyewitness and deposed before the Court that while returning from Holealur, the driver of the tractor was driving the vehicle in a rash and negligent manner and caused the accident in which the deceased died on the spot. Ex. P-1 is the complaint given by the father of the deceased. It is stated therein that on 22.01.2001 his son had gone to Holealur in the tractor belonging to respondent No.1 and while returning at about 01:00 hours in the night intervening 22nd and 23rd January, 2001 has son sustained

> fatal injuries in the accident. It is also clearly stated therein that the deceased was standing in the hook which connects tractor to the trailer and the victim fell down due to rash driving and the tractor ran over his head and the chest. The evidence of P.W.1, mother is also to the same effect. She has also stated in her evidence that the deceased was studying in B.A. and running a Pan Beedi shop.
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> 7. A combined reading of all witnesses leads to an inference that the victim was not travelling with his goods at the time of accident. The accident has occurred at about 00:01 hours in the night. In the circumstances, the insurer cannot be saddled with the liability to satisfy the award. The appeal merits consideration and accordingly allowed."

7. On the other hand, a perusal of the judgment of the Tribunal reveals that the Tribunal had analysed the evidence of PW-2 and PW-1 in its entirety and also took into account other evidence in the shape of charge-sheet filed by the Investigating Officer, in respect of Crime No.12/2001 registered in respect of the accident in question for accepting the factum that deceased had travelled in the tractor along with his goods to Holealur where he had gone to unload the foodgrains of Maize loaded on the tractor belonging to respondent No.2, which was driven by Mallikarjuna Beemappa Ganiger and while returning from Holealur, met with the

accident. In her examination-in-chief, PW-1 deposed as follows:

> "On the fatal day of accident i.e., on 23.01.2001 in the evening at about 5:00 p.m., my son deceased Chanabasayya gone to Hole-Alur for unloading the foodgrains in Commission Agent shop for sale of the same in a TT Unit bearing No.KA, 29/T-1651 T-1652 belongs to Basanagouda Hireniganagoudar, after unloading the foodgrains belongs to us while returning to the village by my son in the said TT unit the driver of the said T.T. unit was driving the vehicle in rash and Regulations and caused the accident near Heballi village at anappana halls (stream) due to this negligent driving of the driver, my son fell down from the T.T. unit and the said vehicle passed on the head of my and due to gracious injuries to head my son was succumbed on the spot, and P.M. was conducted at Govt. Hospital Badami."

PW-2 in his examination-in-chief stated as follows:

> "On 23.11.2001 Lt. chanabasayya and myself together went to Rone in the tractor of Basanagouda Hireninganagouder by loading the maize in the said tractor and while returning back near our city near Ganapan village the driver of the tractor drove a tractor in very rash and negligent manner and in a high speed endangering the human life and injured Lt. Chanabasayya and he died on the spot. I have witnessed the said accident. Like me others were also in the tractor."

When cross-examined, PW-2 stated that on the date of accident they had taken maize crop in the said tractor. Notably, the fact that the deceased had loaded his agricultural produce on the tractor and also accompanied the tractor for

unloading the same to Holealur and while returning met with an accident, has gone unchallenged.

8. In light of the entire evidence, the Tribunal found thus:

> "7. .....This fact has been denied by respondent no.3 and as such the burden of proving of issue No.1 is on the petitioner and in order to prove issue No.1 second petitioner is examined as PW-1 who has filed her affidavit evidence and PW-1 deposed in her evidence regarding the accident caused to her son deceased Chanabasayya on 23.1.2001 involved with tractor and trailer belongs to respondent no.1 driven by respondent no.2 on the date of accident. Through counsel for respondent no.3 cross examined PW-1, but PW-1 has not given admissions in order to discard her evidence. Even PW-1 has denied the suggestion that deceased was standing on a hook portion in the tractor trailer which connects the tractor Engine and trailer portion of the vehicle and travelling on that day, but PW-1 has denied this suggestion. In order to prove the accident an independent witness PW-2 is examined by the petitioner wherein this witness has also filed affidavit evidence and stated regarding the accident caused to deceased Chanabasayya on 23.1.2001 involved with tractor and trailer unit belongs to respondent no.1. This witness is also cross-examined by counsel for respondent no.3, but nothing is elicited to discard the evidence of PW-2. The petitioners have relied upon police documents, which are marked through PW-1 as per Exp-1 to Ex.P-5. ExP-1 is the true copy of FIR registered before Badami P.S in Crime No.12/2001 as per the complaint filed by first petitioner i.e, father of the deceased u/sec.279 and 304 (A) of IPC. The Copy of complaint is also annexed to the FIR wherein petitioner no.1 has filed this complaint before the Badami P.S. on 23.1.2001 against the driver of T.T. Unit. ExP-2 is the charge sheet filed by the I.O. against respondent no.2, driver of the T.T. unit before JMFC Badami wherein a criminal case bearing C.C.No.314 of 2001 was registered against driver of T.T. unit for the offence punishable u/Secs. 279 and 304 (A) of IPC. Ex.P3 is the spot mahazar and contents of Ex.P-3 clearly proves the spot and accident and

> also it corroborated with spot of accident as relief by the petitioners in their claim petitioner. ExP-4 is the IMV report filed by the Motor Vehicle Inspector after examination of T.T. unit involved in the accident and this document proves that accident in question did not cause due to any mechanical defect in the vehicle. ExP-5 is the post mortem examination report of the deceased Chanabasayya conducted by M.O. Community Health Center at Badami and as per P.M. report the death had occurred due to head injuries and also damage to the vital organs of brain of the deceased."

The Tribunal also considered the plea taken by the insurer (respondent No.1) which was sought to be established through evidence of its officer working as an administrative officer, in the following words:

> "8. Respondent No.3 has examined its officer who is working as Administrative officer in the office of respondent no.3 and this witness has filed affidavit evidence accepted u/0 18 rule 4 of CPC wherein RW-1 stated that, deceased Chanabasayya died as he was standing on a hook portion of Tractor Trailer and died due to his negligence on the date of accident. But in support of this contention RW-1 has not produced any rebuttal documents to that of Ex.P-1 to Ex.P-5. However, RW-1 in his cross examination clearly admitted that in the complaint marked at Ex.P-1 it is not recited with deceased obtained T.T. unit from respondent no.1 on hire basis and RW-1 has denied the suggestion made to him during cross examination that he is deposing false evidence regarding deceased was standing on a tractor hook which connects the engine and trailer portion. After considering the evidence of RW-1 though respondent no.3 in its petition filed to the claim petition and also RW-1 in his oral evidence stated that the accident had occurred due to the gross negligence of deceased himself, but to support this contention there is no cogent and oral evidence nor documentary evidence placed on record by the respondent no.3. On the contrary, there is evidence of PW-1 and 2 and also Ex.P-1 to Ex.P-5 which are the documents obtained from C.C. file wherein as per the complaint filed by the petitioner No.1, a crime was registered

against the accused i.e., driver of T.T. unit and I.O. after due investigation has filed charge sheet against respondent no.2 who was driver of the T.T. unit on the date of accident and hence there documents are not denied by the respondent no.3. on the contrary, Ex.P-1 to Ex.P-5 clearly establish that the accident in question was occurred due to actionable negligence of driver of T.T. unit wherein respondent No.2 was driving the said tractor and trailer on 23.1.2001 and caused accident at 1.00 a.m. near Ganappan Halla just 1.00 k.m. away from Hebballi village on Cholchagudda-Govankoppa PWD road and the gross negligence of driver caused the death of Chanabasayya who succumbed to injuries and died on the spot as he was travelling in the said T.T. unit on that day and hence the negligence is clearly attributed on the part of driver of T.T. unit and death of Chanabasayya was the proximate cause of road traffic accident which comes under the preview of Sec. 166 of M.V. Act and this positive evidence lead by the petitioners is proved by the documentary evidence, but the contention of respondent no.3 has to be rejected and also there is no cogent evidence to hold that the death of Chanabasayya was due to his own negligence. Hence, after appreciation of evidence of PW-1 and 2 and RW-1 and by perusal of Ex.P-1 to Ex.P-51 I hold that, the petitioners have prove issue No.1 as against respondent no.1 to 3. Accordingly, issued no.1 is answered in affirmative."

And again in paragraph 11, on the issue of entitlement of compensation it noted thus:-

"…The petitioners claimed compensation from respondent No.1 to 3 jointly and severally wherein respondent No.1 is owner of offending vehicle respondent No.2 driver of vehicle and respondent No.3 is the insurer, but RW-1 representing insurance company has given evidence denying its liability contending that, there is breach of policy conditions particularly there is violation of condition clause "A" of Ex.R-1 wherein deceased had hired the vehicle of respondent No.1 in order to load maize corns to dump at hole Alur in Commission Agent shop. In the evidence of RW-1 insurance cover note is produced and it is marked at Exhp-1. The

> contention of respondent No.3 is rejected by this Tribunal regarding the defence taken that death of Chanabasayya was due to his gross negligence. On perusal of Ex. R1 it is valid policy obtained from respondent No.1 over his T.T. unit wherein policy period commences from 12.2.2000 to 11.2.2001. In view of admission of RW-1 in cross examination wherein RW-1 admitted in his cross reads as follows:-
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> "…..On the contrary, the deceased had went to dump maize corns belongs to them in the vehicle owned by respondent No.1. Hence, the contention of respondent No.3 that vehicle and its use was for hire and reward is not proved by any cogent evidence on record. On the contrary, the offending vehicle T.T. unit was used for carrying foodgrains to each the sale point i.e., Commission Agent shop at Hole-Alur which an agricultural produce of petitioners family carried called Tractor- Trailer. Therefore this decision relied by the petitioners is aptly applicable wherein the use of vehicle is for agricultural purpose and not for any other commercial purpose. Once it is held use of vehicle by the deceased for agricultural purpose then question of violating any policy conditions by respondent No.1 will not arise….."

9. As mentioned earlier, the High Court by a sweeping observation proceeded to reverse the finding of fact recorded by the Tribunal. Whereas, the Tribunal had duly considered the evidence of PW-1, PW-2 and the material accompanying the charge-sheet filed in respect of Crime No.12/2001 as also the plea taken by the insurer and the evidence of RW-1. In our opinion, the conclusion reached by the Tribunal is a possible view, which could not have been disturbed by the

High Court in the appeal filed by the insurer, much less in such a casual manner, as has been done by the High Court.

10. Notably, the High Court has not even adverted to the other findings recorded by the Tribunal as regards the manner in which accident occurred and, in particular, about the rash and negligent act of the driver of the tractor which had caused the accident resulting into the death of Chanabasayya on the spot due to grievous injuries suffered by him. The High Court has also not adverted to the finding recorded by the Tribunal in respect of Issue Nos.2 and No.3 regarding the proof of age, occupation and income of the deceased and the quantum of just and reasonable compensation. The High Court based its conclusion that the insurer cannot be saddled with the liability to satisfy the award, on the finding that the deceased was not travelling along with his goods at the time of accident. No more and no less. However, as the said finding recorded by the High Court cannot be sustained, the finding of the Tribunal on the factum that the deceased had travelled along with his goods will have to be affirmed and restored. It would

necessarily follow that the insurer was not absolved of its liability to pay the compensation amount awarded to the claimants. We say so because the Tribunal has found, as of fact, that the insurance policy brought on record was a valid policy in respect of the offending tractor for the period commencing from 12.02.2000 to 11.02.2001.

11. Assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants as the offending tractor was duly insured, the insurer would be still liable to pay the compensation amount in the first instance with liberty to recover the same from the owner of the vehicle owner (respondent No.2), in light of the exposition in the case of ***National Insurance Co. Vs. Swarn Singh and Ors.***[1] In paragraph 110 of the said decision, a three-Judge Bench of this Court observed thus:

> "110. The summary of our findings to the various issues as raised in these petitions are as follows:
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> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by

[1] (2004) 3 SCC 297

compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) xxx

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) xxx

(vi) xxx

(vii) xxx

(viii) xxx

(ix) xxx

(x) **Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the**

> **recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.**
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> (xi) **The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."**
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> (emphasis supplied)

12. However, in the facts of the present case, we have no hesitation in taking a view that consequent to affirmation and restoration of the finding of fact recorded by the Tribunal regarding the factum of deceased had travelled along with his goods at the time of accident, the insurer would be obliged to satisfy the compensation amount awarded to the claimants.

13. Reverting to the argument of the appellants that the Tribunal committed manifest error in computing the compensation amount, we find that the appellants (claimants) did not file an appeal for enhancement of compensation

amount against that part of the award passed by the Tribunal nor chose to file any cross-objection in the First Appeal filed by the insurer before the High Court. Moreover, from the judgment of the High Court there is no indication that any attempt was made on behalf of the appellants to ask for enhanced compensation amount on the grounds as would have been available to the appellants in that behalf. Significantly, in the present appeal also, the appellants have not asked for any "relief" against that part of the award passed by the Tribunal, regarding the quantum of compensation. The relief claimed in this appeal is only to set aside the decision of the High Court passed in the First Appeal preferred by the insurer. In this backdrop, it will not be appropriate for this Court to consider the argument regarding the quantum of compensation at the instance of the appellants (claimants).

14. As a result, the appeal would succeed only to the extent of setting aside the impugned judgment of the High Court passed in the First Appeal filed by the insurer (respondent No.1) as prayed and consequently, by restoring the Award

dated 21st January, 2008 passed by the Motor Accident Claims Tribunal, Badalkot. We order accordingly.

15. The appeal is allowed in the above terms with costs.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

New Delhi;
March 28, 2018.