

A SMT. SUVARNAMMA & ANR.  
v.  
UNITED INDIA INSURANCE COMPANY LTD. & ANR.  
(Civil Appeal No. 3734 of 2018)

B APRIL 11, 2018.

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

*Motor Vehicles Act, 1988:*

C *Compensation – Claim for – For fatal accident – Award of  
compensation by Claims Tribunal, holding the owner of the  
offending vehicle and the insurance company jointly and severally  
liable – Appeal by insurance company – High Court set aside the  
award absolving the insurance company from liability – On appeal,  
held: In the facts of the present case, the conclusion of the Tribunal  
D was a possible view, which could not have been reversed by High  
Court by merely making sweeping observations in a casual manner  
without there being any reliable evidence – Award confirmed.*

**Allowing the appeal, the Court**

E **HELD: 1. There is no dispute about the fact that at the  
time of occurrence the tractor which was involved in the accident  
was being driven by the driver—owner in a rash and negligent  
manner. The evidence of PW3, an independent eyewitness to  
the incident, in all probabilities, makes it clear that the deceased  
had died because of the accident caused by the tractor that was  
F being driven in a rash and negligent manner while the victim was  
going to his home as a pedestrian on the footpath. The FIR also  
discloses the very fact. There is no material on record except  
the deposition of RW-1, the Divisional Manager of the Insurance  
Company, to establish that the victim was a passenger of the  
tractor. A mere statement that the victim was unlawfully travelling  
G on the tractor, without any probable evidence cannot be taken  
into consideration, when the evidence, to the contrary is available,  
in the form of deposition of an independent eyewitness. The  
driver-owner-insured of the tractor was not examined as witness.  
It is also manifest that he did not prefer appeal against the verdict  
of the Tribunal which in other words supports the case of**

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**appellants—claimants. Therefore, the conclusion reached by the Tribunal is a possible view, which could not have been reversed by the High Court by merely making sweeping observations in a casual manner without there being any reliable evidence. [Para 9][1025-E-H]**

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**2. The respondents are jointly and severally liable to pay the total amount of compensation to the appellants along with interest @ 6% p.a. from the date of filing of claim petition till the date of realization. [Para 10][1026-B]**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3734 of 2018.

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From the Order dated 10.07.2015 of the High Court of Karnataka at Bengaluru in MFA No. 1045 of 2011.

Mahesh Thakur, Ms. Vipasha Singh (for Dr. Sushil Balwada), Advs. for the Appellants.

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Mohit Paul, Vineet Malhotra and Anugrah Niraj Ekka, Advs. for the respondents.

The judgment of the Court was delivered by

**N. V. RAMANA, J.** 1. Leave granted.

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2. This appeal is directed against the judgment dated 10<sup>th</sup> July, 2015 passed by the High Court of Karnataka at Bengaluru in Miscellaneous First Appeal No. 1045 of 2011. By the said judgment, the High Court has allowed the appeal filed by the Insurance Company exonerating it from the liability and set aside the judgment of the Motor Accident Claims Tribunal, Chickballapur awarding compensation to the claimants.

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3. Pursuant to a complaint lodged on 13<sup>th</sup> July, 2004 by the appellant No. 1 herein in P.S. Cheluru stating that her husband Narasa Reddy left home at 7 p.m. on 12<sup>th</sup> July, 2004 for supplying milk to the Chakavelu Dairy and did not return. In the early morning on the next day it was learnt that her husband was crushed under a ground levelling tractor bearing registration No. TN 38 B 5899 at Brahamanara Tank, near Maddamma Temple on Chakavelu-BuddalavaraPalli Road causing his instantaneous death on the spot due to high speed and negligent driving by the driver of the tractor. Accordingly, FIR has been registered in

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A Crime No. 28/2004 under Sections 279 and 304(A), IPC. Subsequently, two claim petitions have been filed one by the wife and son of the deceased and the other by the father of the deceased, claiming compensation.

4. Learned Senior Civil Judge and Member of Motor Accident  
B Claims Tribunal, Chickballapur framed the issues and arrived at a conclusion that the deceased died in the said motor accident due to rash and negligent driving of the respondent No. 2 herein (owner of the tractor). Accordingly, the Tribunal has awarded a compensation of Rs.4,31,000/- to the legal representatives of the deceased i.e. Appellants herein and  
C Rs.10,000/- to the father of the deceased on the head of loss of love and affection. The tribunal has also directed that the Insurance Company (Respondent No.1) and owner of the tractor (Respondent No. 2) are jointly and severally liable to pay the said compensation amounts with an interest @ 6% p.a. w.e.f. the date of claim petition till the date of realization and they shall deposit the said amounts within three months  
D from the date of its order.

5. Aggrieved by the judgment of the Tribunal awarding compensation to the appellants herein, the Insurance Company assailed the same before the High Court in Miscellaneous First Appeal No. 1045 of 2011. However, the High Court formed the view that the claim of  
E legal heirs of the deceased was based on false grounds. By the judgment impugned herein, the High Court declared the judgment of the Tribunal in awarding compensation to the legal heirs of the deceased as erroneous and set aside the same absolving the insurance company from the liability. Consequently, the legal heirs of the deceased being appellants herein are before us in the present appeal.

F 6. We have heard learned counsel on either side and carefully perused the material on record.

7. Learned counsel appearing for the appellants submitted that the High Court has committed a serious error of law by disproving the specific finding recorded by the Tribunal based on the valid material on  
G record. It is clear from the evidence of eyewitness Eashwara Reddy—PW3 who was a passerby at the relevant time that the accident occurred due to rash driving in negligent manner by the driver of the vehicle while the victim was walking on the footpath. In spite of cogent and reliable evidence adduced by PW3, the High Court discredited the same and

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wrongly presumed that the deceased was travelling in the tractor by sitting on its blade, though there was no evidence let in by the Insurance Company on that aspect. Even in the absence of examination of the driver of the tractor, though nothing was adversely elicited in the cross-examination of prosecution witnesses, the High Court ignoring the settled principles of law based its judgment only on certain presumptions, conjectures and surmises which requires interference of this Court.

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8. Learned counsel appearing for the Insurance Company, however, supported the judgment of the High Court and submitted that the High Court was right in not relying on the evidence of PW3. The theory that the deceased was walking on the footpath at the time of accident, was introduced by the appellants only with a view to claim compensation. The High Court assessed the aforesaid circumstances in a proper perspective and rightly observed that the appellants are not entitled for compensation.

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9. Having given our anxious consideration to the rival submissions advanced by the respective counsel and having perused the material on record. There is no dispute about the fact that at the time of occurrence the tractor which involved in the accident was being driven by the driver—owner in a rash and negligent manner. The evidence of PW3, an independent eyewitness to the incident, in all probabilities, makes it clear that the deceased had died because of the accident caused by the tractor that was being driven in a rash and negligent manner while the victim was going to his home as a pedestrian on the footpath. The FIR also discloses the very fact. At the same time, we find no material on record except the deposition of RW-1, the Divisional Manager of the Insurance Company, to establish that the victim was a passenger of the tractor. A mere statement that the victim was unlawfully travelling on the tractor, without any probable evidence cannot be taken into consideration, when the evidence to the contrary is available, in the form of deposition of an independent eyewitness. Notably enough, the driver-owner-insured of the tractor was not examined as witness. It is also manifest that he did not prefer appeal against the verdict of the Tribunal which in other words supports the case of appellants—claimants. Considering the circumstances stated above, in our opinion, the conclusion reached by the Tribunal is a possible view, which could not have been reversed by the High Court by merely making sweeping observations in a casual manner without there being any reliable evidence. We, therefore, afford our concurrence to the judgment arrived at by the Tribunal.

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A            10. Resultantly, as held by the Tribunal, the respondents are jointly and severally liable to pay the total amount of compensation i.e. Rs.4,31,000/- to the appellants herein along with interest @ 6% p.a. from the date of filing of claim petition till the date of realization.

B            11. For all the aforesaid reasons, the appeal stands allowed in the aforestated terms, however, with no order as to costs.

Kalpana K. Tripathy

Appeal allowed.