

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.813 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/respondent No.2 challenging the judgment and award, dated 19.11.2008, passed in O.P.No.1550 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 23.07.2007 at about 9:20 AM, the petitioner and his wife C.Lalitha were proceeding on a motorcycle bearing No.

AP 11 AA 7314 and when they reached near Bairamalguda main road, Saroomnagar, the driver of the lorry bearing No.AP 29 U 5492 had driven the same in a rash and negligent manner and dashed against the motorcycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, L.B.Nagar registered a case in Crime No.765 of 2007 for the offence punishable under Section 304-A I.P.C. Due to injuries, C.Lalitha (hereinafter referred to as 'the deceased') died on the spot. By the time of accident, the deceased was aged about 30 years and used to earn Rs.5,000/- per month as a private employee. The petitioner, who is the husband of the deceased, is dependant on the income of the deceased. The lorry, which belongs to respondent No.1, was insured with respondent No.2 as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.7,25,000/- to the petitioner. Hence, the petition.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the rider of the motorcycle and there was no negligence on the part of the driver of the lorry. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. This respondent is not liable to pay compensation unless the driver of the lorry was having valid and

effective driving licence as on the date of accident. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

- (1) Whether the deceased died in the accident on 23-7-2007 due to rash and negligent driving of the driver of Lorry bearing No.AP 29U 5492?
- (2) Whether the petitioner is entitled to any compensation? If so, from whom?
- (3) To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.9 were marked. On behalf of the contesting respondent, RW.1 was examined and Exs.B.1 and B.2 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry as well as the rider of the motorcycle in the ratio of 75%:25% and allowed the petition in part by awarding compensation of Rs.5,34,750/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred the present appeal.

9. Heard Sri Jayanthi S.C. Sekhar, the learned counsel for respondent No.2 (appellant) and Sri V.Atchuta Ram, the learned counsel for the petitioner (respondent No.1).

10. The contention of the learned counsel for respondent No.2 is two fold: (1) The Tribunal ought to have fixed the liability in the ratio of 50%:50% on the part of the driver of the lorry and the rider of the motorcycle, and (2) The amount of compensation awarded by the Tribunal is on higher side.

11. Per contra, the learned counsel for the petitioner submitted that the Tribunal has rightly considered the material available on record and arrived at a conclusion that the accident occurred due to the negligence of the lorry driver and the rider of the

motorcycle in the ratio of 75%:25%. He further submitted that the Tribunal has awarded just and reasonable compensation.

12. Now the point that arises for consideration in this appeal is:

Whether the Tribunal was justified in fastening the negligence in the ratio of 75%:25% on the part of the driver of the lorry and the rider of the motorcycle or not?

Point.

13. A perusal of the record reveals that as on the date of accident, three persons were travelling on the motorcycle. A perusal of Exs.A.1 – Certified Copy of F.I.R. and A.3 – Certified Copy of charge sheet reveals that the police registered a criminal case against the driver of the lorry and filed charge sheet against him. As per the recitals of Exs.A.1 and A.3, the accident occurred due to the negligence of the driver of the lorry. However, basing on the material available on record, the Tribunal arrived at a conclusion that the rider of the motorcycle was also responsible to cause the accident. The Tribunal fixed the negligence at 25% on the part of the rider of the motorcycle on the sole ground that three persons were travelling on the motorcycle. I have carefully perused the oral and documentary evidence available on record. Simply because triple riding on the motorcycle by itself is not a sufficient ground to fasten the liability on the part of the rider of the motorcycle. Taking into consideration the manner of the accident, the Tribunal arrived at a conclusion that the rider of the motorcycle was also responsible to cause the accident. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of learned counsel for respondent No.2 that the rider of the motorcycle alone is responsible to cause the accident in view of overwhelming documentary evidence produced by the petitioner. The claimants have not filed any appeal or cross objections challenging the finding of the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 became final so far as the petitioner is concerned in view of non-filing of

the regular appeal or cross objections by him. Having regard to the facts and circumstances of the case, I am of the considered view that the Tribunal rightly apportioned the negligence on the part of the driver of the lorry and the rider of the motorcycle in the ratio of 75%:25%.

14. By the time of accident, the deceased was aged about 30 years. The Tribunal has taken the multiplier '16.5'. As per **Sarla Verma v. Delhi Transport Corporation**, the appropriate multiplier to be taken for the age group of 26 to 30 years is '17'. As per the averments made in the petition, the deceased used to earn Rs.5,000/- per month. To prove the recitals of Ex.A.6 – Salary Certificate, PW.2 was examined. In the cross-examination, PW.2 categorically deposed that he did not file any document to show that Satya Sai Communication is in existence on that day or not? It is not uncommon to file this type of certificates in order to claim more compensation. It is the duty of the Tribunal or the Court to scrutinise this type of certificates so as to prevent miscarriage of justice. If the Tribunal or the Court accepts this type of salary certificates, the litigant public may feel that they are capable of misleading the Tribunals and Courts. Having regard to the facts and circumstances of the case, I am not placing any reliance on Ex.A.6. The Tribunal committed error while placing reliance on Ex.A6 – Salary Certificate without scrutinizing the same. Taking into consideration the age and educational qualification of the deceased, I am of the considered view that she may earn Rs.4,500/- per month. Out of which, 1/3rd shall be deducted towards personal expenses of the deceased. The deceased may contribute Rs.3,000/- per month to her family members. The loss of dependency comes to Rs.6,12,000/- (3,000 X 12 X 17). In view of the finding of this Court on issue No.1, the petitioner has to forego 25%, which comes to Rs.1,53,000/-. Therefore, the petitioner is entitled for an amount of Rs.4,59,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

15. In the result, the Appeal is allowed in part by reducing the quantum of compensation from Rs.5,34,750/- to Rs.4,59,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 30.03.2015

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