

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.Nos.1750 of 2006 and 311 of 2009

COMMON JUDGMENT:

M.A.C.M.A.No.1750 of 2006 is filed by the claimants, whereas M.A.C.M.A.No.311 of 2009 is filed by the insurance company, under Section 173 of Motor Vehicles Act, challenging the judgment and award, dated 21.04.2006 passed in O.P.No.374 of 2005 on the file of the Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar.

2. The parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal to avoid confusion.

3. The facts leading to filing of the appeal, in brief, are as follows: On 15.11.2004, Pandilla Rajaiah and his sister were proceeding to Machupeta from Akkepalli village on a motor cycle bearing No.AP-25-D-5045 after attending a function. When they reached the outskirts of Rajapur village, Rajaiah, while riding the motor cycle, hit the stationed lorry bearing No.ATR – 6027. The accident occurred due to the rash and negligent parking of the lorry by its driver, without switching on the parking lights, against whom the Station House Officer, Mutharam Police Station, registered a case in Crime No.96 of 2004 under Sections 304-A and 337 IPC. Due to the injuries sustained in the accident, Rajaiah (hereinafter referred to as, the deceased) died. By the time of the accident, the deceased was aged about 56½ years and used to earn Rs.11,000/- per month as an employee of Singareni Collieries Co. Ltd., Ramagundam. The first petitioner is the wife, the second petitioner is the daughter and third petitioner is the son of the deceased and they are all dependants on the income of the deceased. The first respondent is the driver of the lorry bearing No.ATR 6027. The lorry, which belongs to the second respondent, was insured with New India Assurance Co. Ltd., (respondent Nos.3

and 4). Respondent Nos.5 to 8 are married daughters of the deceased. Therefore, the respondents 1 to 4 are jointly and severally liable to pay compensation of Rs.8,00,000/- to the petitioners with interest and costs.

4. The respondent Nos.1, 2, 4 and 5 to 8 remained *ex parte*. The third respondent filed counter denying all the material averments made in the petition *inter alia* contending that the accident was occurred due to rash and negligent riding of the motor cycle by the deceased. This respondent is not liable to pay the compensation to the petitioners unless they establish that the driver of the lorry was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition is liable to dismissed so far as this respondent is concerned.

5. A perusal of the docket sheet reveals that the Tribunal framed the following issues:

1. Whether the accident had occurred due to rash and negligent driving of the vehicle i.e., auto (*sic*, lorry) bearing Number ATR 6027 by its driver?
2. Whether the petitioner is entitled to recover compensation and if so to what amount and from whom?
3. To what relief?

6. During the course of the trial, on behalf of the petitioners, P.W.1 was examined and Exs.A1 to A9 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

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 rash and negligent driving of the driver of the auto, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.4,29,000/- directing the respondent Nos.1 to 3 to pay the same jointly and severally with

proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the claimants preferred MACMA No.1750 of 2006 and the insurance company preferred MACMA No.311 of 2009.

8. A perusal of the above issues clearly indicates that the Tribunal considered the issues framed in OP No.459 of 2005 filed by the sister of the deceased. In this case, the deceased while riding motor cycle hit the stationed lorry. The contention of the petitioners is that the driver of the stationed lorry was responsible to cause the accident whereas the contention of the third respondent is that the deceased was responsible to cause the accident.

9. A perusal of the appendix of evidence reveals that evidence was recorded in both the O.Ps separately. In this case, on behalf of the petitioners, P.W.1 was examined and Exs.A1 to A9 were marked. No eye witness to the accident was examined on behalf of the petitioners. Suffice it to say, court or tribunal cannot look into the evidence recorded in other related matters. If the appeal is decided basing on the improperly framed issues, it may cause prejudice to either of the parties to the proceedings. When this is pointed out by this court, learned counsel for both the parties, in one voice, requested to remand the matter to the Tribunal to properly frame the issues and record the evidence afresh.

10. Having regard to the facts and circumstances of the case, the request of learned counsel for both the parties is conceded.

11. In the result, the appeals are disposed of, setting aside the judgment and award, dated 21.04.2006 passed in O.P.No.374 of 2005 on the file of the Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar. The matter is remanded to the Tribunal for disposal in accordance with law, after framing appropriate

issues and affording reasonable opportunity to both the parties to adduce evidence. The Tribunal is further directed to dispose of the matter as expeditiously as possible preferably within a period of five months from the date of receipt of a copy of this judgment. If the claimants have already withdrawn the compensation amount, recovery of the same by the third respondent shall be subject to the result of O.P. No.374 of 2005. There shall be no order as to costs. Miscellaneous petitions, if any pending in these appeals, shall stand closed.

T.SUNIL CHOWDARY, J

April 13, 2015

NOTE:

Dispatch the order copy along with
Lower Court record to the Tribunal by 20.4.2015.

(By order)

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