

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1192 OF 2010

JUDGMENT:

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This appeal is preferred by the appellant/respondent No.3 challenging the judgment and award, dated 22.01.2007 passed in M.V.O.P.No.1237 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, East Godavari at Amalapuram (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:

Nookala Venkata Satya Subrahmanya Sarma @ Babi was proceeding on his motorcycle bearing No.AP 5 K 4087 on the left side of the road i.e., National High Way No.214 and when he reached near Sadguru real estate in Achampeta junction of Sarpavaram, the driver of the lorry bearing No.AP 5 U 9888 had driven the same in a rash and negligent manner and dashed against the motorcycle of Babi. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom the Station House Officer, Timmapuram registered a case in Crime No.98 of 2003 for the offence punishable under Section 304-A I.P.C. Due to injuries, Babi (hereinafter referred to as 'the deceased') died on the spot. By the time of accident, the deceased was aged about 34 years and used to draw an amount of Rs.7,490/- per month as a Clerk in D.S.P. Office, Amalapuram. The petitioners and respondent No.4 are the dependants on the income of the deceased. Respondent No.1 is the driver, respondent No.2 is the owner of the lorry and respondent No.3 is the insurer of the lorry. Therefore respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.12,00,000/- to the petitioners.

4. Respondent No.1 filed counter denying all the averments made in the petition *inter alia* contending that the lorry did not involve in the accident. The Police foisted a false case against this respondent as the deceased was working in the Police Department. The petition is not maintainable against respondent No.1. Hence, the petition is liable to be dismissed.

5. Respondent No.2 filed memo adopting the counter of respondent No.1.

6. Respondent No.3 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligence on the part of the deceased and there was no negligence on the part of the driver of the lorry. The present petition is not maintainable for non-impleading of the owner and insurer of the motorcycle. The compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

7. Respondent No.4 filed counter stating that she is also one of the dependants on the income of the deceased.

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

- (1) Whether the deceased Nookala Venkata Satya Subrahmanya Sarma @ Babi died in motor accident occurred on 18/19-11-2003 at about 1.15 A.M. near Sadguru real Estate, N.H.214 Road, Athimpeta junction caused by the rash and negligent driving of lorry bearing No.AP 5 U 9888 by the 1st respondent?
- (2) Whether the petitioners being the dependants of the deceased Nookala Venkata Satya Subrahmanya Sarma @ Babi, are entitled to the compensation of Rs.12,00,000/- with interest therein from all the respondents with joint and several liability?
- (3) To what relief?

9. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, respondent No.4 examined herself as RW.1 and got marked Exs.B.1 to B.3.

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10. 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 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.9,25,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

11. Feeling aggrieved by the judgment and award of the Tribunal, the respondent No.3 – Insurance Company preferred the present appeal.

12. Heard Sri M.Satish Reddy, the learned counsel for respondent No.3 (appellant), Sri T.V.S.Prabhakara Rao, the learned counsel for the petitioners (respondent Nos.1 and 2) and Sri T.V.Jaggi Reddy, the learned counsel for respondent No.2 (respondent No.4).

13. The contention of the learned counsel for respondent No.3 is that the amount of compensation awarded by the Tribunal is on higher side. He further submitted that the Tribunal without taking into consideration the income of the deceased awarded the compensation on assumptions and presumptions.

14. Per contra, the learned counsel for the petitioners submitted that the amount of compensation awarded by the Tribunal under various heads is not just and reasonable.

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

Whether the Tribunal has awarded just and reasonable compensation or not?

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Point:

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16. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the finding recorded by the Tribunal with regard to the manner of the accident and the cause of death of the deceased. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased.

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17. By the time of accident, the deceased was aged about 34 years. The Tribunal has rightly applied the multiplier as '16'. The oral testimony of PW.3 coupled with Exs.A.6 and A.7 reveals that by the time of accident, the deceased was drawing gross salary of Rs.7,494/- and net salary of Rs.5,589/- per month. Basing on the oral and documentary evidence available on record, the Tribunal rightly arrived at a conclusion that the deceased may earn Rs.6,950/- per month and per annum, it comes to Rs.83,400/-. Out of which, the Tribunal rightly deducted 1/3rd towards personal expenses of the deceased. By following the procedure contemplated under the Motor Vehicles Act, 1988, the Tribunal arrived at a conclusion that the petitioners are entitled to Rs.8,90,000/- towards loss of dependency. The Tribunal has also rightly awarded an amount of Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The Tribunal awarded the total amount of compensation of Rs.9,25,000/- under different heads. The petitioners have not filed appeal or cross objections challenging the quantum of

compensation awarded by the Tribunal. In the absence of the regular appeal or cross objections, the petitioners are not entitled to claim more compensation than the amount awarded by the Tribunal. In **Ranjana Prakash and others v. Divisional Manager, New India Assurance Co. Limited and another**^[1], the Apex Court held that where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal if it is by the owner or insurer.

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18. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court has no power to enhance the compensation in the appeal filed challenging the quantum of compensation by the insurer. The Tribunal has awarded just and reasonable compensation to the petitioners. A perusal of the record reveals that absolutely there is no material on record to establish that respondent No.2 had violated the terms and conditions of policy so as to absolve the liability of respondent No.3. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners. Viewed from any angle, there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

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19. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 23.03.2015

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[\[1\]](#) 2011 ACJ 2418