

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.2554 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/respondent No.2 challenging the judgment and award, dated 26.06.2008 passed in M.V.O.P.No.219 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Ongole (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 28.05.2007 at about 9:00 AM, one G.China Chenchaiiah @ Chenchaiiah after unloading of bricks at Kondamudusu Palem proceeding to his village while driving the tractor and trailer. When the tractor reached near Kanumalla cross road of Singarayakonda by-pass road, the driver of the Lorry bearing No.AP 26 W 6989 had driven the same in a rash and negligent manner and hit the tractor and trailer. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, Singarayakonda registered a case in Crime No.86 of 2007 for the offence punishable under Section 304-A I.P.C. Due to injuries, Chenchaiiah (hereinafter referred to as 'the deceased') died. By the time of accident, the deceased was aged about 30 years and used to earn Rs.5,000/- per month. The petitioners are the dependants on the income of the deceased. The lorry insured with respondent No.2 – Insurance Company with effect from 10.02.2007 to 09.02.2008. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.6,00,000/- to the petitioners.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed written statement denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the deceased and there was no negligence on the part of the driver of the lorry. Respondent No.1 had violated the terms and conditions of the policy by entrusting the vehicle to the deceased, who was not having valid and effective driving licence to drive the transport vehicle. Therefore, there is no obligation on the part of this respondent to indemnify the liability of respondent No.1.

The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the deceased died due to the rash and negligent driving of the driver of R1's lorry?
2. What is the correct age and income of deceased as on the date of accident?
3. Whether the petitioner is entitled for compensation, if so, to what extent and from whom?
4. To What relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.5 were marked. On behalf of the contesting respondent, no oral evidence was adduced and Ex.B.1 was 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 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.4,52,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation.

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

9. Heard Sri Naresh Byrapaneni, the learned Standing Counsel for respondent No.2 – Insurance Company and Sri Madhava Rao Nalluri, the learned counsel for the petitioners (respondent Nos.1 to 6).

10. The contention of the learned Standing Counsel for respondent No.2 is three fold: (1) The Tribunal failed to consider that the deceased was also equally responsible to cause the accident; (2) the Tribunal has not properly assessed the monthly income of the deceased; and (3) The Tribunal awarded higher rate of interest i.e., at the rate of 9% per annum.

11. Per contra, the learned counsel for the petitioners submitted that the amount of compensation awarded by the Tribunal is just and reasonable. He further submitted that respondent No.2 did not adduce oral or documentary evidence to establish the contributory negligence, if any, on the part of the deceased.

12. Now the points that arise for consideration in this appeal are:

1. Whether the deceased was responsible to cause the accident, if so, to what extent?
2. Whether the amount of compensation awarded by the Tribunal is on higher side or not?
3. Whether the rate of interest awarded by the Tribunal is on higher side or not?

Point No1:

13. To prove the manner of the accident and *factum* of death of deceased, petitioner No.1 herself examined as PW.1 and got marked Exs.A.1 to A.5. PW.2 is an eye witness to the accident. It is an admitted fact that PW.1 is not an eye witness to the accident, therefore, her testimony is no way helpful to prove the manner of the accident. As per the testimony of PW.2, the accident occurred due to the rash and negligent driving of the driver of the lorry. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Exs.A.1 – F.I.R. and A.5 – charge sheet, the accident occurred due to the rash and negligent driving of the driver of the lorry.

14. No doubt, respondent No.2 has taken a specific plea in the written statement that the accident occurred due to the negligent driving of the tractor and trailer by the deceased. Mere taking of the plea in the written statement by itself would not amount to proving of the stand taken by respondent No.2. If really the accident occurred due to the negligence of the deceased, what prevented respondent No.2 to examine the driver of the lorry or any other eye witness to the accident to substantiate its case? For one reason or other, respondent No.2 did not take any steps to adduce oral or documentary evidence to substantiate its stand. If really the accident occurred due to

the negligence of the deceased also, what prevented the driver of the lorry to lodge a complaint to the police immediately after the accident? This is one of the important aspect to be considered by the Tribunal in order to appreciate the rival contentions. Absolutely, there is no evidence much less legally admissible evidence to establish that the deceased was also equally responsible to cause the accident. On the other hand, the petitioners have adduced cogent and convincing evidence to prove the negligence on the part of the driver of the lorry. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. 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 only. Hence, the point is answered in favour of the petitioners and against respondent No.2.

POINT No.2:

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15. The contention of learned Standing Counsel for respondent No.2 is that the Tribunal has not properly assessed the monthly income of the deceased. The fact remains that the deceased was a driver by profession. In the villages, one may earn Rs.3,000/- per month even by attending coolie work. In such circumstances, there is every possibility for a driver of the tractor to earn Rs.3,000/- per month. The Tribunal rightly considered various aspects and rightly arrived at a conclusion that the deceased may earn Rs.3,000/- per month. Out of which, the Tribunal deducted 1/3rd towards personal expenses of the deceased. If the number of claimants are 4 to 6, the Tribunal has to deduct 1/4th towards personal expenses of the deceased in view of the principle laid down in **Sarla Verma v. Delhi Transport Corporation**. Therefore, this Court inclined to deduct 1/4th towards personal expenses of the deceased. The Tribunal has applied the multiplier '17.5'. As per **Sarla Verma's** case (supra 1), the appropriate multiplier to be taken for the age group of 26-30 years is '17'. The Tribunal committed error while taking the multiplier as '17.5'. The Tribunal arrived at a conclusion that the loss of dependency comes to Rs.4,20,000/-. Instead of 1/3rd 1/4th is deducted towards personal expenses of the deceased and the multiplier '17' is taken, the loss of dependency comes to Rs.4,59,000/- (2,250 X 12 X

17). Whereas the Tribunal awarded only Rs.4,20,000/- towards loss of dependency. The Tribunal has also awarded an amount of Rs.32,000 towards loss of estate, loss of consortium and funeral expenses. In total, the Tribunal has awarded compensation of Rs.4,52,000/- to the petitioners. The claimants have not filed any appeal or cross objections challenging the quantum of compensation. Having regard to the facts and circumstances of the case, I am of the considered view that awarding of compensation of Rs.4,52,000/- is just and reasonable to meet the ends of justice.

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POINT No.3:

16. The contention of the learned Standing Counsel for respondent No.2 is that the Tribunal has awarded 9% interest which is on higher side. Section 171 of the Motor Vehicles Act, 1988 (for short, 'the Act') enables the Tribunals to award interest from the date of petition till the date of deposit. However, Section 171 of the Act is silent with regard to the rate of interest to be awarded by the Tribunals. The Tribunal has to exercise its discretionary power judiciously basing on the sound principles of law. While awarding the rate of interest, the Tribunal has to take into consideration the prevailing rate of interest charged in the locality as well as the guidelines issued by the Reserve Bank of India from time to time. Taking into consideration the facts and circumstances of the case, the Tribunal has awarded interest at the rate of 9% per annum. At this juncture, this Court is placing reliance on the ratio laid down in **Puttamma Vs. K.L.Narayana Reddy**, wherein the Hon'ble Apex Court held at para No.62 as follows:

“In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.”

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the Tribunal has rightly exercised its discretionary power and awarded interest at the rate of 9% per annum. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

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

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

T.SUNIL CHOWDARY, J

Date: 24.03.2015

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