

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1129 of 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 02.2.2009 passed in M.V.O.P. No.457 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-VI Additional District and Sessions Judge, Kurnool.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present petition, in brief, are as follows: On 21.5.2007, one K.Balarami Reddy was proceeding to Kurnool from Amadaguntla village on motor cycle bearing No.AP 9 AL 7171. When he reached the outskirts of K.Nagalapuram village, the driver of ambassador car bearing No.AP 07 G 0555 had driven the same in a rash and negligent manner and hit the motor cycle of Balarami Reddy. The accident occurred due to the rash and negligent driving of the driver of the ambassador car against whom the Station House Officer, K.Nagalapuram Police Station registered a case in Crime No.27 of 2007 under Section 304A IPC. Due to the accident, Balarami Reddy (hereinafter referred to as, the deceased) sustained grievous injuries on various parts of the body and died on the same day while undergoing treatment in Government General Hospital, Kurnool. By the time of the accident, the deceased was aged 65 years and used to earn Rs.80,000/- per annum as landlord and contractor. The petitioner is the dependant on the income of the deceased. The ambassador car, which belongs to the first respondent, was insured with the second respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the accident occurred due to the negligence of the deceased while driving the motor cycle and there was no negligence on the part of the driver of the ambassador car. This respondent is not liable to pay compensation to the petitioner unless the driver of the ambassador car was having valid and

effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as this respondent is concerned.

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

1. Whether the accident occurred due to rash and negligent driving of the driver of the Car bearing No.AP 07 G 0555?
2. Whether the 1st respondent violated the terms and conditions of the Insurance Policy?
3. Whether the petitioner is entitled to any compensation from the respondents and if so, to what extent?
4. To what relief?

7. During the course of the trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the second respondent, no oral evidence was let in, but Ex.B1 was marked.

8. 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 ambassador car, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.1,27,000/- with interest at 9% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 and 2 jointly and severally pay the compensation. Dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9. Heard Sri K.Rathanga Pani Reddy, learned counsel for the appellant – claimant and Ms.V.Durga, learned Standing Counsel for the second respondent.

10. Learned counsel for the claimant submitted that the Tribunal discarded Exs.A5 and A6 on untenable grounds. He further submitted that the amount of compensation awarded by the Tribunal is too meager. *Per contra*, learned counsel for the second respondent submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

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

Whether the Tribunal has awarded just and reasonable

compensation to the petitioner or not?

Point:

12. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the ambassador car, which resulted in the death of the deceased. The finding recorded by the Tribunal, on issue No.1, became final in view of non-filing of appeal or cross-objections by respondent Nos.1 and 2. The Tribunal has assigned cogent and valid reasons to its finding 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 ambassador car, which resulted in the death of the deceased.

13. A perusal of the record reveals that by the time of the accident, the deceased was aged about 65 years. The Tribunal has taken the multiplier '5'. As per the decision reported in **Sarla Verma v DTC**, appropriate multiplier applicable for the age group of 61 – 65 years is '7'. In the petition, it is mentioned that the deceased used to earn Rs.80,000/- per annum. A perusal of Ex.A5 reveals that the deceased obtained licence to do contract works. Absolutely there is no material on record to establish that the deceased had executed any contract works during his life time. Except self-served testimony of P.W.1, there is no other convincing evidence to prove the income of the deceased as claimed. No doubt the deceased may supervise landed property. Taking into consideration the age of the deceased, the Tribunal rightly arrived at a conclusion that the deceased may earn Rs.3,000/- per month. After deducting $\frac{1}{3}^{\text{rd}}$ of the income towards personal expenses of the deceased, his contribution to the family comes to Rs.2,000/- per month. Loss of dependency would come to (Rs.2,000 X 12 X 7) Rs.1,68,000/-. The Tribunal awarded an amount of Rs.5,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses. In view of the principle enunciated in **Ramilaben Chinubhai Parmar v National Insurance Company Ltd.**, the petitioner is entitled to Rs.50,000/- towards conventional damages. The petitioner is entitled to the total compensation under the following heads:

Rs.

1. Loss of dependency : 1,68,000

2. Conventional damages : 50,000

Total : 2,18,000

The compensation awarded to the petitioner, as above, is just and reasonable to meet the ends of justice. Accordingly, the point is answered.

14. In the result, the appeal is allowed in part enhancing the compensation from Rs.1,27,000/- to Rs.2,18,000/- (Rupees two lakh eighteen thousand only). The petitioner is entitled to the interest at 7.5% per annum on the enhanced amount of Rs.91,000/-. The respondent Nos.1 and 2 shall jointly and severally pay the same with proportionate costs and interest from the date of petition till the date of deposit. The respondent Nos.1 and 2 are directed to deposit the same within a period of two months from the date of receipt of a copy of this order. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 31.3.2015

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