

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA. No. 140 of 2013

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JUDGMENT:

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This Appeal is filed by the Insurance Company against the Award and Decree dated 03.09.2012 in M.V.O.P.No.349 of 2007, wherein the I Addl. District & Sessions Judge-cum-Chairman, Motor Accidents Claims Tribunal, Chittoor, has granted an amount of Rs.9,00,000/- together with interest @ 7.5% p.a, from the date of petition till the date of realization, as compensation towards death of deceased, in favour of respondents 1 to 3 herein and against the appellants and respondents 4 and 5 herein.

2. The appellants herein are the respondents 2 and 4-United India Insurance Company, while respondents 1 to 3 herein are the petitioners-claimants and respondents 4 and 5 are the respondents 1 and 3-riders-cum-owners of the motor cycles bearing Nos.TN 05/F 1289 and AP 03/P 5156, respectively that involved in the accident, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts, in brief, are that on 04.05.2006, the owner-cum-rider of the motor cycle bearing No. TN 05/F 1289, drove the same in a rash and negligent manner and dashed against the motor cycle bearing No. AP 03/P-5156 being driven by the 3rd respondent at Municipal High School, Greampet, on Chittoor-Vellore main road. As a result of which the deceased Seshadri @ Seshadri Naidu as well as the riders and pillion rider of 3rd respondent's vehicle fell down on the road and sustained injuries. Immediately after the accident, they were shifted to Government Hospital, Chittoor. The

3rd respondent and the deceased Seshadri @ Seshadri Naidu were referred to CMC Hospital, Vellore for better treatment. The Police, I Town Police Station, Chittoor registered a case in Crime No.58/2006 under Section 338 of IPC against the deceased and subsequently after the investigation, charge sheet was filed against the 1st respondent rider of offending vehicle on which the deceased was traveling as pillion rider. The deceased was discharged from CMC Hospital, Vellore on 24.05.2006. Thereafter he was treated as outpatient in Government Hospital, Chittoor. Due to severity of multiple injuries, he died on 26.07.2006 and the complaint was altered from Section 338 IPC to 304-A IPC. The 1st petitioner is the father, 2nd petitioner is the mother and 3rd petitioner is the sister of the deceased who filed MVOP.No.349 of 2007 under Section 166 (1) (c) of the Motor Vehicles Act, 1988 claiming an amount of Rs.20,00,000/- as compensation for the death of the deceased Seshadri @ Seshadri Naidu in the accident stating that the deceased was a brilliant student and got job immediately after completion of B.Tech in Siloka IT Solutions Private Limited in the month of February, 2006 and was getting Rs.10,000/- per month as salary; that the deceased also obtained educational loan of Rs.1,17,000/- from Andhra Bank, Kongareddipalle and that during the stay at CMC Hospital, Vellore, the petitioners incurred a sum of Rs.96,000/- towards treatment of the deceased.

5. The 1st respondent filed written statement admitting the manner of accident alleged by the petitioners as true and correct. It is also stated that at the time of accident, the 1st respondent drove the offending vehicle and that since the offending vehicle was insured with the 2nd respondent company and they are only liable to pay the compensation.

6. The 3rd respondent remained *ex parte*.

7. The 4th respondent filed written statement, which was adopted by the 2nd respondent. It is stated that the petitioners filed the OP for compensation by fabricating the documents and by producing false evidence; that the accident was occurred due to rash and negligent driving of the offending vehicle by the deceased Seshadri @ Seshadri Naidu who has no driving licence to drive two-wheeler and dashed against the motor cycle bearing No. AP 03P 5156 belongs to the 3rd respondent and that the First Information Report also discloses about the same. As such, the OP itself is not maintainable. It is also stated that there is violation of the policy conditions and the petition is liable to be dismissed against the respondents 2 and 4.

8. The Tribunal, after considering the evidence adduced on behalf of the petitioners i.e., evidence of P.Ws.1 and 3 and Exs.A1 to A18 and on behalf of the respondents i.e., R.Ws.1 and 2 and Exs.B1 and B2, granted compensation of Rs.9,00,000/- payable by the respondents 1 and 2.

9. Aggrieved by the aforementioned order, the respondents 2 and 4-The United India Insurance Company Limited, preferred the instant appeal.

10. Learned counsel for the appellants submitted that the accident occurred due to rash and negligent driving of the offending vehicle by the deceased and that he was not having valid driving licence, as such the Tribunal erred in fixing liability on it for payment of compensation. He also submits that there is no income proof of the deceased and no documents are filed to show the income of the deceased, as such the Tribunal has erred in granting exorbitant compensation without any basis.

11. On the other hand learned counsel for the respondents-claimants submits that the respondents failed to prove that the deceased was driving the vehicle without driving licence and he is responsible for the accident and as such the Tribunal has rightly fixed the liability on the insurance company. It is also contended that the Tribunal basing on the evidence of PW2 and Exs.A2 to A4, held that the respondent No.1 was the rider of the offending vehicle and was responsible for the accident and as such, the contention of the appellants that the deceased drove the vehicle without having valid driving licence and was responsible for the accident, is not correct.

12. In the present case, respondent No.1 before the Tribunal also admitted that he is driving the offending motor cycle and that the same is insured by the appellants herein. PW2 also spoke about the manner of the accident stating that the respondent No.1 driven the offending motor cycle, on which the deceased was a pillion rider, in a rash and negligent manner and dashed against the motor cycle driven by the 3rd respondent and his version also supports Exs.A1, A2 and A4. Basing on the evidence of PW2 and Exs.A2 and A4 the Tribunal came to the conclusion that the deceased was not driving the offending vehicle and that respondent No.1 before the Tribunal, was driving the offending vehicle.

13. I have perused the findings of the Tribunal wherein the Tribunal has stated that the respondents failed to prove that the deceased was driving the offending vehicle at the time of accident without driving licence and he was responsible for the accident. The evidence of PW2 coupled with Exs.A2 and A4 proved that respondent No.1 was driving the offending vehicle at the time of accident in a rash and negligent manner and was responsible for the accident.

14. In view of the same, I do not see any error on the part of the Tribunal in coming to such conclusion, because the same is supported by the evidence of PW2 and Exs.A1 to A4. As such, the contention of the appellants' counsel that the deceased is not having valid driving license and drove the offending vehicle in a rash and negligent manner does not hold good.

15. As far as proof of income is concerned Exs.A15-certificate issued by the Siloka IT Solutions Private Limited, Bangalore show that the deceased was paid an amount of Rs.10,000/- per month for the work he was performing. Further PW3 in his evidence also stated that during the years 2003 to 2007, he worked in administration side in Siloka IT Solutions Private Limited, Bangalore and he knew the deceased who worked in their company from February, 2006 as Software Engineer Trainee and was drawing a consolidated stipend of Rs.10,000/- and Ex.A15 is the certificate issued by him. As such, the contention of learned counsel for the appellants in respect of income fixed by the tribunal cannot be accepted and the tribunal's finding regarding the same is upheld.

16. The Tribunal while calculating the loss of dependency has taken the age of mother of the deceased as '42' years and by relying on the Judgment in ***Managing Director, APSRTC, Musheerabad X Roads, Hyderabad v. C.Rangaswamy & another*** ^[1] has taken the income of the deceased as Rs.10,000/- per month and by relying on the Judgment in ***Sarla Verma and others v. Delhi Transport Corporation*** ^[2] has taken the relevant multiplier as '14' and awarded an amount of Rs.8,40,000/- towards loss of dependency.

17. Further, though it is stated that during the treatment of the

deceased the claimants incurred an amount of Rs.96,000/-, the Tribunal awarded an amount of Rs.50,000/- and also granted a meagre amount of Rs.10,000/- towards loss of estate, though in **Rajesh v. Ranabir Singh**^[3], the Supreme Court has stated that atleast a minimum amount of Rs.1 lakh should be granted towards loss of estate.

18. Accordingly, the appeal is dismissed. No order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

13.11.2015.
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A.RAJASHEKER REDDY, J

^[1] 2012(4) ALD 609

^[2] 2009 ACJ 1298

^[3] 2013 ACJ 1403 = (4) ALT – 35 (SC)