

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. Nos.32 of 2006 and 3970 of 2008

COMMON JUDGMENT:

M.A.C.M.A.No.32 of 2006 (former appeal) is preferred by the petitioners in O.P.No.217 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar (for short, 'the Tribunal') dissatisfied with the award of Rs.1,35,000/- as compensation by the order dated 23.09.2005, for the death of one Bujagani Rajasekhar Goud, son of the petitioners, who died in unmarried status, in a road accident, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'); whereas, M.A.C.M.A.No.3970 of 2008 (latter appeal) is preferred by the 2nd respondent-Insurance Company in the same O.P. challenging the very same order on the ground that the driver of the auto did not possess valid and effective driving licence to drive the auto, a transport vehicle.

2. The appellants in the former appeal (respondent Nos.1 and 2 in the latter appeal) are the petitioners, while respondent Nos.1 and 2 in the former appeal (respondent No.3 and appellant in the latter appeal), who are the owner and insurer of the accident vehicle respectively, were respondents in both the original petitions.

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

4. The facts in brief are that on 01.03.2002 at about 5-30 p.m., the said Rajasekhar Goud boarded an auto bearing registration No.AP 22U 2965 to go to Mahabubnagar to bring pooja saman to perform Siva pooja in their house and when their auto reached Vijaya Mohan Reddi Dambar Quarry, since the driver of the auto driven it in a rash and negligent manner and applied sudden brakes, the left tyre of the auto got punctured and the auto fell aside the road, resulting in multiple injuries to the deceased and occasioning his instantaneous death. The concerned police also registered a crime against the driver of the auto. The petitioners projected that the deceased was aged 23, working as an electrician in Sairam Electric Shop, earning Rs.3,000/- per month and contributing the entire amount for the family's sustenance, sought a sum of Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who

are the owner and insurer of the auto. Later, amending the contents of paragraph-2 of the petition, the words “applied sudden brakes, due to which the auto fell aside of the road” were added by the orders dated 27.07.2005 in I.A.No.776 of 2005.

5. The 1st respondent, though, entered appearance, did not file counter. The 2nd respondent opposed the claim including the ground that the driver did not possess valid and effective driving licence on the date of accident.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"i. Whether the accident occurred on 1-3-2002, at about 6-00 pm., in the limits of Dharmapur village, due to rash and negligent driving of Auto bearing No.AP 22-U/2965, by its driver and whether it resulted in causing the deceased Bujagani Rajashekar goud @ Rajender Goud?

ii. Whether the petitioners are entitled for any compensation? If so, to what amount, and from whom?

iii. To what relief?"

7. During enquiry before the Tribunal, the 1st petitioner examined himself as P.W.1 besides examining B.Narsimhulu Goud as P.W.2 and marked Exs.A.1 to A.9. On behalf of the contesting 2nd respondent-Insurance Company, one M.Chalapathi Rao, from its local branch, was examined as R.W.1 and marked Exs.B.1 and B.2, which are copies of insurance policy and extract of driving licence of the accident vehicle.

8. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by both parties, held issue No.1 in favour of the petitioners; and on issue No.2, taking notional income at Rs.15,000/- per annum and deducting 1/3rd therefrom, arrived the contribution of the deceased to the family at Rs.10,000/- per annum, and taking the age of the younger parent of the deceased, who is 2nd petitioner, applied multiplier '13' as per the II Schedule to Section 163-A of the Act and arrived the loss of dependency at Rs.1,30,000/-, besides granting Rs.5,000/- towards funeral expenses, and, thus, a total compensation of Rs.1,35,000/- was granted by the Tribunal with interest at 7.5% per annum from the date of petition till realisation. The Tribunal also discussed the evidence of R.W.1 and placing reliance on the decisions of the Hon'ble Supreme Court in **Tamil Nadu State Transport Corporation Ltd., vs. S.Rajapriya and others** and **New India Assurance**

Company Ltd., vs. Charlie and another, fixed interest at 9% per annum, and on the aspect of licence, the Tribunal did not agree with the stand of Insurance Company, and, thereby allowed the claim fastening joint and several liability on the respondent Nos.1 and 2 to pay compensation.

9. It is the aforesaid order which is under challenge in the former appeal contending in the grounds of appeal that meager compensation was granted by the Tribunal stating that the Tribunal ought to have taken income at Rs.3,000/- per month despite there being evidence through Ex.A.9, and, therefore, sought to grant balance amount.

10. In the grounds of appeal in the latter appeal, the Insurance Company again insisted that the Tribunal, somehow, fastened liability on it despite the fact that there was no effective driving licence to drive the auto, a transport vehicle, by its driver, and, hence, sought to exonerate from its liability.

11. Heard Sri T.Damodar, learned counsel for the petitioners, who are the appellants in the former appeal and respondent Nos.1 and 2 in the latter appeal, and Sri Sriman, learned Standing Counsel for the Insurance Company, who is respondent No.2 in the former appeal and appellant in the latter appeal. None appears for the owner of the vehicle, who is respondent No.1 in the former appeal and respondent No.3 in the latter appeal, despite service of notice.

12. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties. In the former appeal, the petitioners are certainly entitled to more than what was determined by the Tribunal in view of the reasons to be mentioned hereinafter. The inquest report marked as Ex.A.2 would reflect the occupation of the deceased as electrical work. The earnings of the deceased at Rs.3,000/- per month, as projected by the petitioners, since suffers from want of legally acceptable evidence, except Ex.A.9, stands not proved. Therefore, his earnings can be taken as Rs.1,500/- per month and Rs.18,000/- per annum. Since the deceased died in unmarried status, 50% has to be deducted in view of the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**. Therefore, the contribution of the deceased to the family works out to Rs.9,000/- per annum. Since the age of the deceased was shown as 20 years, relevant multiplier is '18' and when the same is applied, the loss of dependency works out to Rs.1,62,000/- (Rs.9,000/- x '18'). The petitioners are also

entitled to a sum of Rs.5,000/- towards funeral expenses.

13. Thus, the petitioners are entitled to a total sum of Rs.1,67,000/- (Rupees one lakh and sixty seven thousand only) as against Rs.1,35,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum from the date of petition till realisation. The petitioners shall apportion their respective shares of compensation as ordered by the Tribunal.

14. Turning to the latter appeal, the learned counsel having perused Exs.B.1 and B.2, fairly concedes that there was valid and effective driving licence to drive a transport vehicle at the time of the accident. Thus, there is no merit in the latter appeal preferred by the Insurance Company.

15. Accordingly, M.A.C.M.A.No.32 of 2006 is allowed in part modifying the order under challenge passed by the Tribunal, by enhancing the compensation, as indicated above, while dismissing M.A.C.M.A.No.3970 of 2008 preferred by the Insurance Company. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

17th March, 2015

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