

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

M.A.C.M.A. No.176 OF 2013

**JUDGMENT:**

This civil miscellaneous appeal is preferred under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 06.7.2012 passed in M.V.O.P. No.496 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Tirupati.

2. For the sake of convenience, the parties to this civil miscellaneous appeal will be referred to as they are arrayed before the Tribunal.

3 .The facts leading to filing of the present appeal are briefly as follows: On 17.5.2009, Smt.J.Varalakshmi, along with petitioner Nos.1 to 3 and some others, had boarded Maruthi Van bearing No.AP 04J 9128 at Sullurpet to go to Venkatachalam. When the Van reached Venkata Ramana Hotel, Manubole on Tada–Nellore bye-pass road, the driver of lorry bearing No.KA 51 3046 had driven the same in a rash and negligent manner and dashed against the Maruthi Van. The accident occurred due to the rash and negligent driving of the driver of lorry bearing No.KA 51 3046 against whom the Station House Officer, Manubolu Police Station registered a case in Crime No.67 of 2007 under Section 304A and 337 IPC. Due to the accident, Varalakshmi (hereinafter referred to as, the deceased) sustained grievous injuries on various parts of the body and died on 21.5.2009 while undergoing treatment in Rama Devi Multi Super Specialty Hospital, Chennai. The first petitioner has spent Rs.5,00,000/- for the treatment of the deceased. By the time of her death, the deceased was aged about 32 years and drawing a salary of Rs.11,400/- per month while working as Assistant Project Manager, District Rural Development Agency (DRDA), Chittoor District. The first petitioner is the husband, petitioner Nos.2 and 3 are children, and they are all dependants on the income, of the deceased. The lorry bearing No.KA 51 3046, which belongs to first respondent, was insured with second respondent-Insurance Company with effect from 14.8.2008 to 13.8.2009; therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent remained *ex parte*. The second respondent filed counter

denying all the averments made in the petition including the manner of the accident, age and income of the deceased, *inter alia*, contending that the accident occurred due to the rash and negligent driving of the driver of Maruthi Van and there was no negligence on the part of the driver of lorry bearing No.KA 51 3046. The petitioners are not entitled to claim compensation unless they prove that the driver of the lorry was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioners is highly excessive and exorbitant. The petition is liable to be dismissed for non-impleadment of the driver, the owner and the insurer of Maruthi Van bearing No.AP 04J 9128.

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

(1) Whether the deceased viz., J.Varalakshmi died due to injuries received by her in the motor vehicle accident that took place on 17.05.2009 due to rash and negligent driving of the driver of the lorry bearing Regn. No.KA 51 3046 belonging to the first respondent duly insured with the second respondent as alleged?

(2) Whether the petitioners are entitled for compensation amount? If so what is the quantum of compensation amount and against whom?

3. To what relief?

6. During the course of enquiry, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A8 and Exs.X1 to X4 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked on behalf of the second respondent.

7. On analysing 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 a compensation of Rs.18,32,712/- with interest at 7.5% per annum from the date of the petition till the date of deposit against the respondent Nos.1 and 2 jointly and severally. Feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent-Insurance Company preferred the present civil miscellaneous appeal.

8. Sri R.Venkat Rao, learned counsel for the second respondent-Insurance Company submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA 51 3046 is not

supported by oral and documentary evidence. He further submitted that the Tribunal failed to appreciate that by the time of the death, the deceased was drawing a salary of Rs.11,400/- per month whereas the Tribunal wrongly taken the salary of the deceased as Rs.15,848/- per month basing on Ex.X2 salary certificate of co-employee. He also submitted that the quantum of compensation awarded by the Tribunal is on higher side.

9 . *Per contra*, Sri T.C.Krishnan, learned counsel for the petitioners-claimants submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA 51 3046 is supported by the oral and documentary evidence available on record. He further submitted that basing on the oral testimony of P.W.1 and Exs.X1, X2 and X4, the Tribunal rightly taken the salary of the deceased as Rs.15,848/- per month. He further submitted that the Tribunal has awarded just and reasonable compensation; therefore, there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal.

10. Basing on the rival contentions, the points that arise for consideration in this appeal are:

(1) Whether the accident had occurred due to the rash and negligent driving of the driver of lorry bearing No.KA 51 3046, which resulted in the death of the deceased?

(2) Whether the Tribunal has awarded just and reasonable compensation?

**Point No.1:**

11. As per the testimony of P.W.1, on 17.5.2009, his family members boarded Maruthi Van bearing No.AP 04J 9128 at Sullurpet to go to Venkatachalam. His testimony further reveals that when they reached Manubolu, the driver of lorry bearing No.KA 51 3046 had driven the same in a rash and negligent manner and dashed against the Maruthi Van. If the testimony of P.W.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.KA 51 3046. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of the accident is concerned.

12. As per the recitals of Exs.A1 (F.I.R.) and A2 (charge sheet), the accident occurred due to the rash and negligent driving of the driver of the lorry. As per the recitals of Ex.A3 (Post Mortem Examination Report) and Ex.A4 (inquest

panchanama), the deceased died due to the injuries sustained in a road accident that occurred on 17.5.2009. If really the accident occurred due to the rash and negligent driving of the driver of the Maruthi Van, what prevented the second respondent to examine the driver of the lorry or any other person to prove the negligence on the part of the driver of the Maruthi Van. Mere taking up a plea in the counter would not amount to proof of the stand taken by the second respondent. Basing on the oral and documentary evidence available on record, the irresistible conclusion that can be drawn is that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA 51 3046, which resulted in the death of the deceased. I am fully agreeing with the findings recorded by the Tribunal so far as the manner of the accident and the factum of death of the deceased are concerned. Accordingly, point No.1 is answered in favour of the petitioners and against the second respondent.

**Point No.2:**

13. As per the testimony of P.W.1, the deceased was working as Assistant Project Manager in DRDA, Chittoor District. P.W.2 is co-employee of the deceased. P.W.3 is Administrative Officer of DRDA, Chittoor District. As per the testimony of P.W.3, the deceased was appointed as Community Coordinator on 15.7.2001 and promoted as Assistant Project Manager on 12.2.2009. The oral testimony of P.W.2 is supported by the recitals of Exs.X1, X3 and X4. The fact remains that by the time of the death, the deceased was working as Assistant Project Manager in DRDA, Chittoor District.

14. As per Ex.A7 salary certificate, the deceased was drawing salary of Rs.11,400/- per month by the time of the accident. As seen from the testimony of P.W.2, subsequent to the death of the deceased, their services were regularised. A perusal of Ex.X4 reveals that P.W.2 and the deceased were promoted as Assistant Project Managers on 12.2.2009 under the proceedings Rc.No.285/SERP/HR/2008. The fact remains that, if the deceased is alive, she would have drawn the salary on par with P.W.2. A perusal of Ex.X2 clearly reveals that P.W.2 is drawing gross salary of Rs.15,848/- per month.

15. The predominant contention of learned counsel for second respondent is that the Tribunal ought to have taken the salary of the deceased as on the date of the accident only. As seen from the testimony of P.W.3, by the time of the death of deceased-Varalakshmi and P.W.2 were working on contract basis. Had the

deceased been alive, certainly her services were also recognised on permanent basis. Viewed from that angle also, the salary of the deceased can be taken as Rs.15,848/- per month as Assistant Project Manager. In view of the same, I am unable to accede to the contention of the learned counsel for the second respondent that the Tribunal has committed error while determining the gross salary of the deceased as Rs.15,848/- and net salary as Rs.12,404/- per month.

16. The annual salary of the deceased is (Rs.12,404 X 12) Rs.1,48,848/-. After deducting 1/3<sup>rd</sup> of the income towards personal expenses of the deceased, her contribution to the family members would be Rs.99,232/-. A perusal of Ex.A6 reveals that the deceased was born on 22.7.1977 and by the time of her death, she was aged about 32 years. As per the principle enunciated in **Sarla Verma v DTC**, the appropriate multiplier applicable for the age group of 31 – 35 years is ‘16’. Thus, the loss of dependency comes to Rs.99,232 X 16 = Rs.15,87,712/-. Besides that, the Tribunal rightly awarded the compensation under various heads. The petitioners are entitled to the compensation as follows:

|    |                                 |           |
|----|---------------------------------|-----------|
| 1. | Loss of dependency              | 15,87,712 |
| 2. | Medicines and extra nourishment | 1,00,000  |
| 3. | Transport charges               | 10,000    |
| 4. | Funeral expenses                | 5,000     |
| 5. | Loss of love and affection      | 50,000    |
| 6. | Loss of estate                  | 50,000    |
| 7. | Loss of consortium              | 30,000    |
|    | Total                           | 18,32,712 |

17. The Tribunal rightly awarded just and reasonable compensation. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the second respondent that the quantum of compensation awarded by the Tribunal is on higher side.

18. The lorry bearing No.KA 51 3046, which belongs to the first respondent, was insured with the second respondent under Ex.B1 policy with effect from 14.8.2008 to 13.8.2009. Ex.B1 policy was in force as on the date of the accident; therefore, the second respondent has to indemnify the liability of the first respondent. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. The findings recorded by the Tribunal are supported by the oral and documentary evidence available on record. There are no grounds much less valid

grounds to interfere with the well-considered judgment and award passed by the Tribunal. Accordingly, point No.2 is answered in favour of the petitioners and against the second respondent. The appeal lacks merits, hence liable to be dismissed.

19. In the result, the civil miscellaneous appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this civil miscellaneous appeal, shall stand closed.

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**T.SUNIL CHOWDARY, J.**

Date: 13.10.2015.

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