

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADESH

-

C.M.A.No. 2291 OF 2005

Between:

Kamalakar Kamala Devi, died and others
... Petitioners/Appellants

And

K. Kiran Kumar S/o Late Kishan Rao and others
... Respondents

DATE OF JUDGEMENT PRONOUNCED: 16-07-2015

-
SUBMITTED FOR APPROVAL:

-
HON'BLE SMT JUSTICE ANIS

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

-
-
-

HON'BLE MRS JUSTICE ANIS

MACMA NO. 2291 OF 2005

JUDGMENT :

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 03.05.2005, passed by the Chairman, Motor Accident Claims Tribunal –cum- V Additional District Judge, Nizamabad, in O.P.No. 137 of 2000, awarding compensation of Rs. 50,000/-.

2. The petitioners filed the above O.P. under Section 166 of the Act, claiming compensation of Rs. 3,00,000/- along with interest at 24% per annum on account of the death of one Kamalakar Kishan Rao (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 27.7.1998 the deceased while returning to his home as a

pillion rider on the crime scooter after finishing his work at office of the Mandal Revenue, and when the scooter reached Bussapur outskirts, a lorry came in opposite direction with dazzling head lights. As such driver of the scooter took the scooter off the road margin and after crossing the lorry the driver of the scooter took the scooter to the main road and suddenly applied brake. As such driver of the scooter lost his control over the scooter and the scooter fell down and due to which, the deceased received grievous head injury and died on the way to hospital.

5. The deceased is the father of the first respondent as well as petitioner Nos. 2 & 3 and husband of the first petitioner (since died). They estimated the compensation to the tune of Rs. 6,00,000/- under various heads. But the claim was restricted to a sum of Rs. 3,00,000/-.

6. Petitioners are the dependants of the deceased and the deceased was the sole breadwinner of the family. Therefore, the petitioners prayed the Court to grant compensation of Rs.3 lakhs.

7. The first respondent-owner of the crime scooter remained *ex parte* before the Tribunal.

8. The second respondent- United Indian Insurance Company filed written statement denying the manner in which the accident occurred, alleged rash and negligent driving of the driver of the crime scooter and contended

that the petitioners have no cause of action against the insurance company. He also contended that the petitioners have taken inconsistent plea in the claim petition that the accident occurred due to rash and negligent driving of the driver of the scooter and the first respondent has not intimated the accident to the insurance company soon after the occurrence and the compensation claimed by the petitioners was excessive. Therefore, prayed the Court to dismiss the petition.

9. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 & 2 were examined and got marked Exs.A.1 to A.7. On behalf of the second respondent, no oral evidence was adduced but got marked Ex.B1, copy of insurance policy.

10. Basing on the evidence on record, the Tribunal held that the deceased died in the accident only due to rash and negligent driving of the first respondent, as such both the respondents are jointly and severally liable to pay compensation, and awarded compensation of Rs. 50,000/- along with interest at 9% per annum.

11. Not satisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

12. The learned counsel for the appellants argued that the deceased was getting salary of Rs. 2,870/- per month and out of the said amount, the deceased was

contributing Rs. 2,000/- per month towards maintenance of the appellants and the Tribunal without considering the income of the deceased, granted Rs. 50,000/- as compensation under no fault liability. Therefore, prayed the Court to enhance the compensation as claimed. He relied on the judgment of this Court reported in **K. Rajani and others v. M. satyanarayana Goud and another**^[1].

The relevant portion at paragraph 25 reads as under:

“25. It is settled law that irrespective of the amount claimed by the claimants, the Courts may award the amount which appears to be just and reasonable in the facts and circumstances of the case. Since the amount now awarded is excess than the amount claimed by the claimants, the claimants are directed to pay the deficit Court fees before obtaining the decree.”

13. On the other hand, the learned counsel for the respondents argued that the Tribunal after considering the evidence of PWs 1 & 2 rightly came to the conclusion that there was no rash and negligent driving on the part of the driver of the scooter but accidentally the scooter was fell down and the deceased received injuries and died and therefore, the Insurance Company is not liable to pay any compensation. He further contended that the Tribunal rightly granted compensation to the petitioners under no fault liability and the said finding needs no interference.

14. Having regard to the submissions made by the learned counsel for both parties, the points that arise for consideration are:

- 1. Whether the compensation awarded by the Tribunal is just and reasonable?*
- 2. Whether the appellants are entitled for enhancement of compensation?*

15. **POINTS:**

According to the evidence of PW-1, he is the second petitioner and the first respondent is his brother and his mother also died. According to him, at the time of accident, his brother-first respondent was driving the scooter and his father was a pillion rider and he is not the eyewitness to the incident, whereas, in the cross examination of PW-2- Ambatla Gangaram, he stated that the accident was not occurred due to negligent driving of the son of the deceased who is driving the motorcycle. Ex. A2, true copy of registered FIR, given at the earliest point of time also speaks that the accident was not occurred due to rash and negligent driving of the driver of the crime scooter. Therefore, the Tribunal held that the accident was not occurred due to rash and negligent driving of the crime scooter by its driver but it took place accidentally due to sudden application of brake while

bringing the scooter on the road from the road margin. Coming to the grant of compensation, the Tribunal observed that the petitioners have not sustained any loss due to death of the deceased as their parents and first respondent are enjoying their lands and are getting income of Rs. 40,000/- to 50,000/- from the agricultural land and held that the petitioners are not entitled for any compensation as they claimed in the claim petition but granted Rs. 50,000/- under no fault liability. As per Ex. B-1 Policy, first respondent is the owner of the vehicle and the second respondent is the insurer of the vehicle. Therefore, the Tribunal after considering all these aspects granted compensation of Rs. 50,000/- to the petitioners under no fault liability and the said finding of the Tribunal needs no interference.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous Petitions, pending if any, shall stand closed.

ANIS, J

DATE: 16.07.2015
KA

^[1] 2014 (6) ALT 331