

The Hon'ble Sri Justice T. Sunil Chowdary

MACMA No.817 OF 2009

JUDGMENT:

1 Appellants / petitioners filed the present appeal assailing the judgment and award dated 21.11.2008 passed in MVOP No.2 of 2008 on the file of Chairman, Accidents Claims Tribunal-cum-District Judge, Guntur whereunder and whereby an amount of Rs.3,35,000/- was awarded as against the claim of Rs.3,50,000/-

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 17.10.2007 at about 9.30 PM one Srinivas Reddy (hereinafter after referred to as 'the deceased') was proceeding towards Perecharla from Chandavaram on his scooter bearing No.AP-7Q- 2534 and when he reached Perecharla bridge, the driver of a lorry bearing No.AP 7W 9169 had driven the same in a rash and negligent manner and dashed against the scooter of the deceased. As a result of the said accident, the deceased sustained grievous injuries and was immediately shifted to Government hospital at Guntur where he succumbed to the injuries on the next day. In connection with the said accident, the Station House Officer, Medikonduru police station registered a case in Cr.No.125 of 2007 under section 304-A of IPC against the driver of the offending lorry. The case of the claimants is that by the date of accident, the deceased was aged about 41 years and was earning Rs.70,000/- p.a. as agriculturist and that the claimants are dependents on the income of the deceased. As on the date of accident, the lorry bearing No.AP 7W 9169 belonging to the first respondent was insured with the second respondent. Therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioners. Hence, the petitioners filed the petition under Sections 163-A and 166 of the Motor Vehicles Act claiming compensation of Rs.3,50,000/- from the respondents 1 and 2.

5 The first respondent who is the owner of the lorry remained *ex parte*. The second respondent – insurer filed written statement, *inter alia*, contending that the accident occurred due to the negligent act of the deceased and that there was no negligence on the part of the driver of the crime lorry. The amount of compensation claimed by the claimants, under various heads, is highly excessive and exorbitant. The petition is not maintainable for non-impleading of the owner and insurer of the motorcycle. The driver of the lorry was not having valid and effective driving licence as on the date of accident. Hence the petition is liable to be dismissed.

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

- i. Whether the deceased died in the accident caused due to rash and negligent driving of the lorry bearing No. AP 7W 9169 by its driver?
- ii. Whether the petitioners are entitled for compensation? If so, what would be the just amount of compensation that the petitioners would be entitled to and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners/claimants P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, held that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 7W 9169 belonging to the first respondent and by fixing the income of the deceased at Rs.2,500/- p.m, granted Rs.3,35,000/- as compensation to the claimants with interest at 7.5% p.a. Dissatisfied with the compensation awarded to them, the petitioners preferred this appeal.

9 Sri Ch.Ravindra Babu, the learned counsel for the petitioners submitted that the Tribunal has not properly assessed the income of the deceased and awarded meager amount of compensation.

10 *Per contra*, Sri G.Vishweshwar Reddy, the learned standing counsel for the second respondent - insurance company submitted that the Tribunal has awarded just and reasonable compensation to the petitioners and that there are no grounds much less valid grounds to enhance the compensation.

11 Now the point for consideration in this appeal is **“To what compensation are the claimants entitled to?”**

POINT :

12 As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the crime lorry belonging to the first respondent. The insurance company has not filed appeal or cross objections challenging the finding of the Tribunal on issue No.1 i.e. with regard to the manner of accident. Hence the finding of the Tribunal on issue No.1 has become final. 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 crime vehicle, which resulted in the death of the deceased.

13 A perusal of the record reveals that by the date of accident, the deceased was aged about 40 years. The Tribunal has not committed any illegality or irregularity while applying the multiplier as 15. Except the self-serving testimony of P.W.1, there is no other evidence to establish the income of the deceased. The petitioners have not placed even a single scrap of paper to establish the income of the deceased. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. The Tribunal, taking into consideration the age of the deceased and other attending circumstances, has arrived at a conclusion that the deceased may contribute Rs.20,000/- p.a. to his family and thereby awarded an amount of Rs.3,00,000/- (Rs.20,000/- X 15) towards loss of dependency to the petitioners. I am fully agreeing with the finding recorded by the Tribunal so far as the income of the deceased is concerned.

14 The Tribunal has awarded an amount of Rs.15,000/- towards loss of consortium to the first petitioner and Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation of dead body.

15 In para No.9 of the judgment, the Tribunal gave a finding that the claimants are entitled to Rs.10,000/- towards transportation of dead body and funeral expenses. However, in the tabular form in the same para, the amount is shown, under the said head, as Rs.5,000/- instead of Rs.10,000/- . May be due to inadvertence the Tribunal might have mentioned the amount as Rs.5,000/- instead of Rs.10,000/- while finally computing the compensation. Hence I am inclined to rectify the mistake committed by the Tribunal. Therefore, the petitioners are entitled to Rs.10,000/- towards transportation of dead body and funeral expenses. The compensation awarded under the various heads is as follows:

Loss of dependency:	
Rs.3,00,000/-	
Loss of consortium:	Rs. 15,000/-
Loss of estate:	Rs.
15,000/-	
Transportation of dead body	Rs. 10,000/-
And funeral expenses:	
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TOTAL:	
Rs.3,40,000/-	
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16 The first respondent being the owner of the lorry bearing No.AP 7W 9169 is vicariously liable for the wrongful acts done by his driver during the course of employment. The crime lorry was insured with the second respondent as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent.

17 In the result, the appeal is partly allowed, the award passed by the Tribunal is modified, and an award is passed for Rs.3,40,000/- in favour of the appellants/petitioners, against the respondents with interest at 7.5% p.a.

throughout, with proportionate costs in the Tribunal. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

February 18, 2015.

kvsn