

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.783 OF 2009

JUDGMENT:

1 Aggrieved by the judgment and award dated 08.02.2006 passed in M.V.O.P.No.521 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Court, Nizamabad, the insurer filed the present appeal.

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

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

4 First petitioner is the wife, petitioner Nos.2 and 3 are parents and petitioner Nos.4 to 9 are children of one Devasath Gopya Naik (hereinafter referred to as 'the deceased'). They filed a petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal claiming compensation of Rs.10.00 lakhs for the death of the deceased. The case of the petitioners is that on 23.03.2002, the deceased along with one G.Satyanarayana was proceeding from Nizamsagar towards Pitlam on a scooter bearing registration No.AP 15-C-6725. The deceased was pillion rider on the scooter. When the scooter reached near Vaddepalli village, a lorry bearing registration No.AP 13-V-5836 (hereinafter referred to as 'the crime vehicle') driven by its driver in a rash and negligent manner, came in opposite direction and hit the scooter. As a result, the deceased fell down from the scooter and then the lorry ran over him. In the said accident, the deceased sustained grievous injuries on various parts of the body and died on the way to Government hospital, Bhanswada. In connection with the said accident, the Station House Officer, Pitlam registered a case in Cr.No.28 of 2002 against the driver of the crime vehicle for the offence punishable under Section 304-A of IPC. It is further pleaded in the claim petition that by the date of accident, the deceased was aged

32 years and used to earn Rs.15,000/- p.m. As on the date of accident, the crime vehicle was insured with the second respondent, therefore, both the respondents are jointly and severally liable to pay compensation to the petitioners.

5 First respondent (owner of the crime vehicle) remained ex parte. Second respondent-appellant filed counter denying the material averments made in the claim petition inter alia contending that there was no negligence on the part of the driver of the crime vehicle. It is further contended that the amount of compensation claimed by the petitioners under various heads is excessive and exorbitant. The petition is not maintainable for non-impleading of the owner and insurer of the scooter bearing registration No.AP 15-C-6725. Hence the petition may be dismissed. In case the Tribunal awards compensation in favour of the petitioners, this respondent may be permitted to recover the amount from the first respondent.

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

- i. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No. AP 13 V 5836 by its driver?
- ii. Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of all the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the second respondent-appellant no oral evidence was adduced, but copy of the insurance policy was marked as Ex.B.1.

8 Having appreciated the oral and 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 crime vehicle and awarded compensation of Rs.5,93,500/- to the petitioners with interest at 7.5% p.a. from the date of petition till

the date of realisation. Feeling aggrieved by granting of the said amount of compensation, the insurance company filed the present appeal.

9 Smt. P. Satya Manjula the learned counsel for the appellant / 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 crime vehicle is not sustainable either on facts or on law. She further submitted that the amount of compensation awarded by the Tribunal is on higher side as the Tribunal assessed the income of the deceased on assumptions and presumptions.

10 Per contra, Mr. Radive Reddy, the learned counsel for the petitioners / claimants submitted that the Tribunal had considered the material available on record in right perspective and awarded just and reasonable compensation. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

11 Now the points that arise for consideration in this appeal are:

- i. Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
- ii. Whether the Tribunal awarded just and reasonable compensation or not?

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12 As per the oral testimony of P.W.1, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. P.W.1 is not an eyewitness to the accident. Therefore, her testimony is not much useful so far as the manner of accident is concerned.

13 As seen from the testimony of P.W.2, on the date of accident, himself and the deceased was proceeding on a scooter. His testimony further reveals that the driver of the crime vehicle came in wrong side and dashed against the scooter due to which the deceased fell down and the crime vehicle ran over him. As per the testimony of P.Ws.1 and 2, the accident occurred due to the rash and negligent driving of

driver of the crime vehicle. P.W.2 is an eyewitness to the accident. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the manner of accident is concerned. If really, the accident occurred due to the rash and negligent driving of P.W.2, what prevented the driver of the crime vehicle to lodge a complaint against P.W.2? This aspect also lends support to the version of the petitioners. As per the recitals of Exs.A.1-F.I.R, Ex.A.2-Charge sheet and Ex.A.5- Motor Vehicles Inspector's report, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. The oral testimony of P.Ws.1 and 2 is fully supported by the recitals of Ex.A.1, A.2 and A.5 so far as the manner of accident is concerned. For one reason or the other, the first respondent remained ex parte. The second respondent-appellant did not take steps to examine the driver of the lorry or any other witness to the accident to demolish the stand taken by the petitioners. As per the recitals of Ex.A.3-inquest panchanama and A.4-postmortem certificate, the deceased died because of the injuries he sustained in the accident. A perusal of the record reveals that the Tribunal had appreciated the oral and documentary evidence in right perspective to arrive at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. Basing on the material available on record, this Court can safely arrive at a conclusion that the occurred due to the rash and negligent driving of the driver of the crime vehicle. Viewed from any angle, there are no grounds much less valid grounds to upset the finding of the Tribunal on this issue.

14 In the claim petition, the age of the deceased is shown as 32 years. However, in Ex.A.3 – inquest panchanama and Ex.A.4-postmortem certificate, the age of the deceased is mentioned as 38 years. The possibility of showing lesser age of the deceased so as to claim more compensation cannot be ruled out. Taking into consideration the recitals of Ex.A.3 and A.4, the age of the deceased can be fixed at 38 years. The Tribunal took the multiplier as 16 in view

of Second Schedule to Section 163-A of the Motor Vehicles Act.

15 As per the testimony of P.W.1, her husband used to earn Rs.12,000/- p.m. As per the testimony of P.W.3, the deceased used to earn Rs.15,000/- to Rs.16,000/- p.m. as agriculturist as well as paddy commission agent. The recitals of Exs.A.6 and A.7 clearly show that the deceased was having landed property. Basing on the oral and documentary evidence, I have no hesitation to hold that the deceased was an agriculturist as well as paddy commission agent. Fortunately, in this case, the petitioners have produced the documentary evidence to prove the avocation of the deceased. It may not be possible for an agriculturist to produce the documentary evidence to prove his income. In the absence of documentary evidence, some guess work is inevitable to assess the income of the deceased. In the instant case, the Tribunal assessed the income of the deceased at Rs.150/- per day, which comes to Rs.4,500/- per month. Even by attending cooli work, one may earn Rs.100/- per day in villages. The possibility of earning Rs.4,500/- by the deceased as an agriculturist as well as paddy commission agent is more probable and believable. The Tribunal has assessed the income of the deceased taking into consideration the prevailing price index in the year 2006 and other attending circumstances. A perusal of the record reveals that the Tribunal has taken meticulous care and caution while assessing the income of the deceased. Therefore, I am unable to countenance the argument canvassed by the learned counsel for the second respondent - appellant that the Tribunal has not properly assessed the income of the deceased. The Tribunal awarded compensation of Rs.5,76,000/- towards pecuniary damages. The first petitioner being the wife, is entitled to consortium. Considering the age of the first petitioner, the Tribunal awarded an amount of Rs.15,000/- towards loss of consortium. Awarding an amount of Rs.2,500/- towards funeral expenses of the deceased cannot be said to be on higher side.

16 Having regard to the facts and circumstances of the case, I am
of the considered view that the amount of compensation awarded by
the Tribunal is not on higher side. The Tribunal has assigned cogent
and valid reasons to its findings.

17 For the foregoing discussion, I see no grounds much less
valid grounds to interfere with the findings recorded by the Tribunal.
Hence the appeal is dismissed. As a sequel, the miscellaneous
petitions, pending in this appeal, if any, shall stand closed. No order
as to costs.

T.SUNIL CHOWDARY, J.

January 29, 2015.

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