

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

MACMA No. 671 of 2009

Judgment:

This appeal is filed challenging the judgment and award dated 28.11.2006 passed in OP No. 820 of 2006 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Nizamabad.

2. The parties will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows. That on 07.02.2006 at about 3.30 AM one Ghouse Mohiuddin (hereinafter referred to as 'deceased') was proceeding to Hyderabad from Nizamabad on the lorry bearing registration No.AP-25U-7707 as a second driver. When the lorry reached Vallabhapur village shivar, the driver of the lorry had driven the same in a rash and negligent manner and dashed against the lorry bearing registration No.KA-01C-2539. Due to the accident, the deceased died on the spot. The accident occurred due to rash and negligent driving of the driver of the crime vehicle against whom the Station House Officer, Chegunta Police Station registered a case in Crime No.13 of 2006 under Section 304-A IPC. By the time of accident the deceased was unmarried and aged about 25 years and used to earn Rs.6,000/- per month as lorry driver. The petitioners are dependents on the income of the deceased. The petitioners

filed the petition claiming compensation of Rs.6,00,000/-. The lorry bearing No.AP-25U-7707 which belongs to the first respondent was insured with the second respondent – Insurance Company as on the date of accident, therefore respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent remained *ex parte*. The second respondent – Insurance Company filed counter denying all the material averments made in the petition, *inter alia*, contending that at the time of accident the deceased was traveling in the lorry as a gratuitous passenger and thereby the first respondent had violated the terms and conditions of the policy, therefore the second respondent is not liable to pay compensation to the petitioners. It is further contended that the amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant, therefore the petition may be dismissed.

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

1. Whether the accident has taken place due to rash and negligent driving of lorry bearing No.AP-25U-7707 by its driver?
2. Whether the petitioners are entitled for compensation? If so to what just amount and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners PWs.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents no oral evidence was adduced,

except marking Ex.B1 copy of insurance policy.

7. Basing on the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the crime vehicle which resulted death of the deceased and allowed the petition in part by awarding compensation of Rs.4,71,000/- with interest at 9% p.a., from the date of petition till realization and respondents 1 and 2 are jointly and severally directed to pay compensation to the petitioners. Feeling aggrieved by the judgment and award of the Tribunal, the claimants preferred the present appeal seeking enhancement of compensation.

8. Heard Sri M. Rajamalla Reddy, learned counsel for the claimants and Sri Azar Sravan Kumar, learned counsel for respondent No.1.

9. The second respondent, having received notice, did not choose to appear before this Court, hence this Court is inclined to pass orders on merits.

10. The contention of the learned counsel for the claimants is that the Tribunal has not considered various documents filed by the claimants and awarded very meager amount. He further contended that the Tribunal having arrived at a conclusion that the deceased was a driver by profession ought to have fixed his income at Rs.6,000/- per month instead of Rs.4,000/- per month.

11. The only point that arises for consideration in this appeal

is whether the Tribunal has awarded fair, just and reasonable compensation or not?

12. As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the crime vehicle, which resulted in death of the deceased. The respondents have not filed any regular appeal or cross-objections challenging the finding recorded by the Tribunal on issue No.1. The finding of the Tribunal on issue No.1 with regard to manner of accident became final. I am fully agreeing with the finding recorded by the Tribunal with regard to manner of accident and factum of death of the deceased.

13. As per the oral testimony of PW.1 his son used to earn Rs.6,000/- per month as lorry driver. In the cross-examination, PW.1 in unequivocal terms deposed that he did not file any document to prove the income of his son. If really, by the time of accident, the deceased was having valid and effective driving license it is not known what prevented the petitioners to file the same. As per the recitals of Ex.A1-FIR and Ex.A3-inquest panchanama, at the time of accident the deceased was traveling in the lorry as second driver. Absolutely there is no material on record to establish whether the deceased had obtained driving license to drive the heavy goods vehicle or not? Further, in the absence of any documentary evidence, some guess work is inevitable to determine the income of the deceased. The Tribunal after taking into consideration the material available on record arrived at a conclusion that the deceased may earn Rs.4,000/- per month. There are no grounds much less any valid grounds to interfere with the

finding arrived at by the Tribunal with regard to income of the deceased. In the light of the foregoing discussion the contention of the learned counsel for the petitioners that the Tribunal has not rightly considered the material available on record has no legs to stand.

14. The Tribunal, in order to apply appropriate multiplier, has taken into consideration the age of the mother of the deceased. The Tribunal awarded Rs.4,16,000/- towards loss of dependency. The Tribunal also awarded Rs.50,000/- towards loss of love and affection and Rs.5,000/- towards transportation charges and funeral expenses. The Tribunal has awarded just and reasonable compensation. In the circumstances, there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal insofar as quantum of compensation is concerned.

15. Accordingly, the MACMA is dismissed. However, in the circumstances, no costs.

16. As a sequel, the miscellaneous petitions, if any, pending in this MACMA shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 24.02.2015

Nsr