

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1009 OF 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 10.12.2007 passed in M.V.O.P.No.1884 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad.

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 On 28.07.2007 at about 10.30 PM one Yadaiah was proceeding to Macharla village from Kalwakurthy on his TVS Victor motorcycle bearing No.AP 22K 9333. When he reached Kalwakurthy petrol pump, the driver of the lorry bearing No.AP 2 T 7268 parked the same in the middle of the road without taking any precautions and consequently Yadaiah dashed the stationed lorry. Due to the accident, Yadaiah (hereinafter referred to as 'the deceased') sustained grievous injuries and died. The accident occurred due to the rash and negligent parking of the lorry bearing No.AP 2 T 7268 by its driver, against whom the Station House Officer, Kalwakurthy police station registered a case in Cr.No.141 of 2007 under sections 304-A and 337 IPC. By the date of accident, the deceased was aged about 29 years and used to earn Rs.5,000/- p.m. as mason. First petitioner is wife, second petitioner is son and petitioner Nos.3 and 4 are parents of the deceased and they are all dependents on the income of the deceased. The lorry bearing No.AP 2 T 7268, which belongs to the first petitioner, was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. Hence the petitioners filed the claim petition seeking compensation of Rs.7.00 lakhs from the respondents.

5 First respondent remained ex parte. Second respondent filed counter denying the material averments made in the petition inter *alia* contending that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased and that there was no negligence on the part of the driver of the

lorry bearing No.AP 2 T 7268. The petitioners are not entitled to claim compensation unless they establish that the driver of the lorry was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the deceased died in the accident on 28.7.2007 due to rash and negligent driving sic. Parking of lorry bearing No.AP 2 T 7268?
- ii. Whether the petitioners are entitled to any compensation? If so, from whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents no oral evidence was let in, but copy of the insurance policy was marked as Ex.B.1.

8 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent act of the driver of the lorry bearing No.AP 2 T 7268 as well as the rash and negligent driving of the motorcycle by the deceased in the ratio of 50% : 50% and allowed the petition in part by awarding compensation of Rs.4,14,000/- by restricting the same to Rs.2,07,000/- with interest at 7.5% p.a. and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Being dissatisfied with the said amount of compensation, the claimants filed the present appeal.

9 Heard Sri U.P. Rao, the learned counsel for the petitioners and Sri G.S. Prakasa Rao the learned standing counsel for the second respondent.

10 Sri U.P. Rao, the learned counsel for the petitioners submitted that the Tribunal committed error while fixing the negligence in the ratio of 50% : 50% on the part of the driver of the lorry and the deceased. He further submitted that the Tribunal failed to consider that the driver of the lorry parked the same in the middle of the road without parking lights which resulted in the death of the deceased even though he drew the motorcycle in careful manner.

11 *Per contra*, the learned standing counsel for the second respondent submitted that a duty is cast on the rider of motorcycle to observe the traffic while driving the motorcycle. He further submitted that had the deceased had taken a little bit of care and caution, the unfortunate accident would not have been occurred and that aspect was rightly considered by the Tribunal. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

12 Now the point that falls for consideration in this appeal is:

“Whether the Tribunal is justified in apportioning the negligence on the part of the driver of the lorry and the deceased in the ratio of 50% : 50%?”

Point:

13 It is needless to say that the petitioners need not plead and prove the negligence on the part of the driver of the lorry as they filed the petition under Section 163-A of the Motor Vehicles Act. Even if the petition is filed under Section 163-A of the Act, the insurer is entitled to prove the negligence if any on the part of the deceased or to establish that there was no negligence on the part of the driver of the crime vehicle. There is no dispute with regard to factum of accident and the death of the deceased. As per the testimony of P.W.2, the width of the road at the place of the accident is 15 ft. In the cross examination of P.W.2 nothing is elicited to shake his testimony so far as the manner of accident is concerned. As per the testimony of P.Ws.1 and 2, the lorry was stationed in the middle of the road without parking lights. As per the recitals of Ex.A.2-charge sheet, the lorry was stationed without parking lights on the B.T. road near a dangerous curve. As per the recitals of the charge sheet, it may not be possible for the rider of the motorcycle to observe the stationed lorry in view of the curve. As per the recitals of Ex.A.1-FIR and Ex.A.2-charge sheet, there was no negligence on the part of the deceased. The recitals of Exs.A.1 and A.2 clearly go to show that there is no possibility for the deceased to observe the stationed lorry without parking lights.

14 It is the duty of the driver of the four wheelers to station the vehicles on the left side of the road with parking lights more particularly during night times. No driver is supposed to station a vehicle in the middle of the road without parking

lights on. If any vehicle is coming from opposite direction with heavy lighting, it may not be possible for the rider of a two wheeler to observe the stationed lorry without parking lights. The fact remains that there was a dangerous curve where the lorry was stationed. If really there was no negligence on the part of the driver of the lorry, what prevented the second respondent to examine the driver of the lorry or any other person to prove that aspect? The second respondent miserably failed to establish that the lorry was stationed with parking lights. When there is no rebuttal evidence, it is not possible for the Tribunal to come to a conclusion that there was contributory negligence, on the part of the deceased to cause the accident. In the instant case, there is no rebuttal evidence to establish that the accident occurred due to negligence or contributory negligence on the part of the deceased. It is not out of place to extract the relevant observations of the Tribunal hereunder:

“Thus, the oral evidence of P.Ws.1 and 2 coupled with documentary evidence marked as Exs.A.1 to A.5 goes to show that the accident occurred and deceased died in the accident and that due to negligent act of the driver of the crime vehicle since it was parked on the middle of the road, but at the same time, I see there is contributory negligence on the part of the deceased also since his two wheeler hit the parked lorry.”

15 I am unable to understand how the Tribunal arrived at a conclusion that there was contributory negligence on the part of the deceased without any material available on record. It appears that the Tribunal itself presumed that there might be some negligence on the part of the deceased to cause the accident. The finding of the Tribunal must be based on the material much less legally permissible material. The Tribunal has no right whatsoever to presume the things more particularly in respect of contributory negligence.

16 The learned counsel for the petitioner has drawn my attention to the following decisions: 1) *Repaka Rajya Laxmi and others Vs. Poldasari Komuraiah and others*, 2) *United India Insurance Co. Ltd., Vs. Kankanti Sathaiah and Others*, 3) *Adipudi Rajyalakshmi and others Vs. Chebrolu Ankamma Rao and others* and 4) *Devaraju T. Vs. United India Insurance Co. Ltd & Anr.*

17 Though stationing of lorry in the middle of the road cannot be termed as rashness, but parking of lorry in the middle of the road without putting the parking lights on, can certainly be described as negligence. As per the principle

enunciated in the cases cited supra, the negligence, if any, can be attributed only to the driver of the lorry, who stationed the lorry in the middle of the road without parking lights, but the same cannot be attributed to the deceased. Having regard to the facts and circumstances of the case and in view of the principle enunciated in the cases cited supra, I am of the considered view that the finding of the Tribunal that the accident occurred due to the rash and negligence on the part of the driver of the lorry in parking the lorry as well as on the part of the deceased in the ratio of 50% : 50% is not sustainable either on facts or on law. 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 act on the part of the driver of the lorry while stationing the lorry in the middle of the road without parking lights, which resulted in the death of the deceased.

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18 If the petition is filed under Section 163-A of the Motor Vehicles Act, the Tribunal has to award compensation basing on the structured formula. The annual income of the deceased has to be taken as Rs.40,000/- only regardless of his actual income. The material available on record clinchingly establishes that the deceased was mason by profession. A mason may earn not less than Rs.3,000/- p.m. The Tribunal rightly considered the avocation of the deceased and arrived at a conclusion that the deceased may earn Rs.3,000/- p.m, out of which, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. The Tribunal arrived at a conclusion that the loss of dependency comes to Rs.4,00,000/-. The Tribunal awarded Rs.14,000/- towards consortium. However, in view of the second schedule to the Act, the petitioners are entitled to Rs.5,000/- towards consortium. But the second respondent has not filed appeal challenging the quantum of compensation awarded by the Tribunal. Having no other alternative, this Court is confirming the amount of compensation awarded by the Tribunal under the head 'loss of consortium'. Therefore, the amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice. The crime vehicle was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

19 In the result, the appeal is allowed in part, the amount of compensation of Rs.2,07,000/- as awarded by the Tribunal is enhanced to Rs.4,14,000/- with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. The respondent Nos.1 and 2 are directed to deposit jointly and severally. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 20th April, 2015.

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