

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.856 OF 2009

JUDGMENT:

_____ This appeal is preferred by the appellant/respondent – Corporation assailing the judgment and award, dated 27.10.2006 passed in M.V.O.P.No.273 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor (for short, 'the Tribunal').

2. _____ For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. _____ The facts leading to filing of the present appeal are, briefly, as follows: On 23.09.2001, Sri Prabhakar Murthy (hereinafter referred to as 'the deceased') and one M.Krishnan were proceeding on TVS-50 Moped bearing No.TN-23-C-3764 on Bangarupalem-Chittoor National Highway on their personal work. When they reached Malleswaram village, the driver of the A.P.S.R.T.C. bus bearing No.AP-9-Z-9031 (for short, the 'crime vehicle') had driven the same in a rash and negligent manner and hit the TVS Moped from its behind. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle against whom the Station House Officer, Bangarupalem Police Station registered a case in Crime No.155 of 2001 for the offences punishable under Sections 304-A and 337 I.P.C. Due to injuries, the deceased died on the spot. At the time of accident, the deceased was proceeding on the TVS Moped as a pillion rider. By the time of death, the deceased was aged about 51 years and earning Rs.23,000/- per month as a Lecturer in Government Degree College for Women, Madanapalle. Petitioner Nos.1 to 4 are the wife, sons and father of the deceased and they are dependants on the income of the deceased. Hence, they filed the petition claiming compensation of Rs.27,00,000/- and the respondent is liable to pay compensation to the petitioners.

4. The respondent – Corporation filed written statement denying all the material averments made in the petition *inter alia* contending that in order to help the petitioners, the police filed charge sheet against the driver of the crime vehicle. The accident occurred due to the negligence on the part of the rider of the TVS Moped, who are necessary and proper parties to the petition. Hence, the petition is not maintainable for non-impleading of owner and insurer of the TVS Moped. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

- (i) Whether the accident in question was caused due to the rash and negligent driving of the rider of the Moped TVS-50 bearing No.TN-23-C-3764 and the driver of the bus bearing No.A.P.09-Z-9031 or any one of them?
- (ii) Whether the petition is bad for non-joinder of necessary parties?
- (iii) Whether the petitioners are entitled for any compensation? If so, to what quantum?

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6. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.8 were marked. On behalf of the respondent, no oral or documentary evidence was adduced.

7. Basing on the oral, 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 only and allowed the petition in part by awarding compensation of Rs.19,84,788/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

8. Feeling aggrieved by the judgment and award of the Tribunal, the respondent – Corporation filed the appeal.

9. Heard Sri A.Rama Rao, the learned Standing Counsel for the

respondent - Corporation and Sri T.C.Krishnan, the learned counsel for respondent Nos.1 to 4.

10. The contention of the learned Standing Counsel for the respondent – Corporation is three fold: (1) The rider of the TVS Moped also equally responsible to cause the accident and that aspect was not considered by the Tribunal, (2) The Tribunal ought not to have placed any reliance on Ex.A.6 – salary certificate for non-examination of the competent person, and (3) The amount of compensation awarded by the Tribunal is on higher side.

11. Per contra, the learned counsel for the petitioners submitted that the Tribunal framed the issue in such a manner to arrive at a conclusion that at whose fault the accident occurred. He further contended that the material available on record clearly reveals that the driver of the crime vehicle hit the TVS Moped from its behind. In such circumstances, the question of contributory negligence on the part of the rider of the TVS Moped does not arise. The Tribunal awarded just and reasonable compensation to the petitioners.

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

1. Whether there was any negligence on the part of the deceased to cause the accident?
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2. Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?
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13. **Point No.1:**

To prove the manner of the accident, petitioner No.1 was examined herself as PW.1 and got marked Exs.A.1 to A.5. PW.2 is an eye witness to the accident. As seen from the testimony of PW.1, she is not an eye witness to the accident, therefore, her testimony is no way helpful to the petitioners with regard to manner of accident. As seen from the testimony of PW.2, on the date of accident, he was also proceeding on the National Highway on a different motorcycle. When they reached Bangarupalem, the driver of the crime vehicle had driven

the same in a rash and negligent manner and hit the TVS Moped on which the deceased was travelling as a pillion rider. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. Apart from PW.2, the driver of the crime vehicle is the competent person to speak about the manner of the accident and the negligence, if any, on the part of the rider of the TVS Moped or the deceased. The respondent – Corporation has not taken any steps to examine the driver of the crime vehicle or any other eye witness to the accident. If really there was no negligence on the part of the driver of the crime vehicle, what prevented him from informing the police about the manner of the accident? As per the recitals of Exs.A.1 – Certified Copy of F.I.R. and A.2 – Certified Copy of charge sheet, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. If really there was no negligence on the part of the driver of the crime vehicle, what prompted the police to file a charge sheet against him? This aspect also lends support to the version of the petitioners so far as the manner of the accident is concerned. A perusal of Exs.A.3 – Certified Copy of inquest report and A.4 – Certified Copy of Post-mortem report reveals that the deceased died due to injuries sustained in a road accident. The oral testimony of PWs.1 and 2 is fully supported by the recitals of Exs.A.1 and A.2 so far as the manner of the accident is concerned.

14. The learned Standing Counsel for the respondent – Corporation submitted that the rider of the TVS Moped is also equally responsible to cause the accident. It is not the case of the respondent – Corporation that by the time of accident, the deceased drove the TVS Moped. The fact remains that the deceased was a pillion rider on the TVS Moped. In such circumstances, the question of contributory negligence as pleaded by the respondent counsel does not arise.

15. Basing on the oral testimony of PWs.1 and 2 coupled with

recitals of Exs.A.1 to A.5, 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. Viewed from any angle, the rider and insurer of the TVS Moped are not necessary and proper parties to the petition. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal on issue No.1. Hence, I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Hence, point No.1 is answered in favour of the petitioners and against the respondent – Corporation.

16. Point No.2:

By the time of death, the deceased was aged about 51 years. The Tribunal has taken the multiplier as '11'. Even as per the decision reported in **Sarla Verma v. Delhi Transport Corporation**^[1], the appropriate multiplier for the age group of 50-55 years is '11'. As per the testimony of PW.1, by the time of death, her husband was working as a Lecturer in Government Degree College for Women, Madanapalle. To prove the avocation and income of the deceased, the petitioners mainly placed reliance on the oral testimony of PW.3 and Exs.A.6 to A.8. As seen from the testimony of PW.3, at the relevant point of time, he was working as a Principal of Government Degree College for Women, Madanapalle. As seen from the testimony of PW.3, by the time of unfortunate death, the deceased was working as a Lecturer in Government Degree College for Women, Madanapalle and drawing a gross salary of Rs.22,213/- per month. His testimony further reveals that the person, who issued Ex.A.6 – salary certificate, retired from service on attaining the age of superannuation. In the cross-examination also, no suggestion was put to this witness that the deceased was not working as a Lecturer in Government Degree College for Women, Madanapalle. No suggestion was put to this witness that the recitals of Ex.A.6 are not true and correct. The contention of the learned Standing Counsel for

the respondent – Corporation is that the Tribunal ought not to have placed any reliance on Ex.A.6. The Tribunal or the Court has to take into consideration the ground realities while appreciating the oral and documentary evidence. It is a known fact that a Government servant retires from service on attaining the age of superannuation. Sometimes, it may not be possible for the claimants to ascertain the whereabouts of the retired employees. PW.2 has identified the signature of the then Principal. If the Principal of College is not a competent person, no one is competent to speak about the salary of the Lecturer. PW.3 is the competent person to speak about the salary particulars of the deceased. Viewed from any angle, I am unable to accede to the contention of the learned Standing Counsel for the respondent – Corporation that PW.3 is not the competent person to speak about the salary of the deceased.

17. A perusal of the record reveals that the deceased was having 8 years of service by the time of his death. There is every possibility for getting increment every year. Taking into consideration all these aspects, the Tribunal arrived at a conclusion that the deceased used to earn Rs.22,213/- per month. The Tribunal has deducted 1/3rd of the salary towards his personal expenses. So, the deceased may contribute Rs.14,809/- per month. Per annum, it comes to Rs.1,77,708/-. The loss of dependency comes to Rs.19,54,788/- (1,77,708 X 11). The Tribunal has also awarded an amount of Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate. The Tribunal, after taking into consideration the documentary evidence available on record, awarded a just and reasonable compensation to the petitioners. Therefore, I am unable to accede to the contention of the learned Standing Counsel for the respondent – Corporation that the amount of compensation awarded by the Tribunal is on higher side. The compensation awarded under various heads is just and reasonable to meet the ends of justice.

Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

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18. In the result, the appeal is dismissed. There shall be no order as to costs.

19. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

20th February, 2015

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