

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.941 of 2009

JUDGMENT:

1 Challenging the Judgment and award dated 03.03.2008 passed in M.V.O.P.No.318 of 2005 on the file of Special Judge for Trial of Offences under S.Cs and S.Ts(PoA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-Chairman, Motor Accidents Claims Tribunal-cum-XX Additional Chief Judge at Secunderabad wherein and whereby an amount of Rs.4,35,000/- was awarded as compensation as against the claim of Rs.6.00 lakhs, the second respondent 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 On 14.07.2005 at about 11.00 p.m, one Talari Anantharamulu was proceeding on his motorcycle Suzuki Max 100 bearing No.AP 28 C 2984 towards Gauthapur village from Tandur. When he reached near Rama Lorry Transport on Chincholi road at Thandur, the driver of the lorry bearing No.AP 9 U 9192 came in a rash and negligent manner at high speed and dashed against the motorcycle from opposite direction. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom the Station House Officer, Tandur registered a case in Cr.No.175 of 2005 for the offences punishable under Sections 304-A and 337 IPC. Due to the accident, Anantharamulu (hereinafter referred to as 'the deceased') received multiple injuries and died on the spot. By the date of accident, the deceased was aged about 28 years and used to earn Rs.8,000/- per month. First petitioner is wife, petitioner Nos.2 and 3 are parents and fourth petitioner is the minor daughter of the deceased. The petitioners are dependents on the income of the deceased. The lorry bearing No.AP 9 U 9192, which belongs to the first respondent, was insured with the second respondent with effect from 06.01.2005 to 05.01.2006. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.6.00 lakhs to the petitioners.

5 First respondent remained ex parte. Second respondent filed counter denying

the various allegations 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. The amount of compensation claimed by the petitioners under various heads is excessive and exorbitant. The petitioners are not entitled to claim compensation against this respondent unless the petitioners establish that the driver of the lorry was having valid and effective driving licence as on the date of accident. Hence the petition may be dismissed.

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

- i. Whether the accident occurred owing to rash and negligent driving of the lorry bearing No.AP 9 U 9192?
- ii. Whether the petitioners are entitled to any compensation and if so, what amount, against whom?
- iii. To what relief?

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

8 On appreciation of 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 lorry bearing No.AP 9 U 9192 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.4,35,000/- with interest at 6% p.a from the date of filing of the petition till the date of deposit and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent preferred the present appeal.

9 The contention of the learned counsel for the second respondent is two fold:

- i. The driver of the lorry was not having valid and effective driving licence as on the date of accident and hence the second respondent is liable to indemnify the liability of the first respondent.
- ii. The amount of compensation claimed by the petitioners is highly excessive and exorbitant.

10 *Per contra*, the learned counsel for the petitioners submitted that the Tribunal has rightly considered the oral and documentary evidence available on record and arrived at a just conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 9 U 9192. He further submitted that the Tribunal awarded just and reasonable compensation.

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

1. Whether the amount of compensation awarded by the Tribunal is just and reasonable?
2. Whether the first respondent has violated the terms and conditions of the policy so as to absolve the liability of the second respondent.

Point No.1:

12 P.W.2 is an eyewitness to the accident whose testimony cannot be discarded on flimsy grounds. The oral testimony of P.W.2 is supported by the recitals of Exs.A.1 – FIR and A.2 – Charge sheet. A perusal of Ex.A.5 – Motor Vehicles Inspector Report reveals that there was no mechanical defect in the crime vehicle. A perusal of Ex.A.3 – panchanama and Ex.A.4- Post mortem examination report reveals that the deceased died due to the injuries sustained by him in the accident. The second respondent has taken a specific plea in the counter that the accident occurred due to the rash and negligent driving of the deceased himself. If really the accident occurred in the manner as stated by the second respondent, what prevented the second respondent to examine the driver of the lorry or any other eyewitness to the accident to substantiate its stand? For the reasons best known to the second respondent, it did not take any steps to examine any eyewitness to the accident to prove the negligence, if any, on the part of the deceased. Mere taking a plea in the counter by itself would not amount to proving of the stand taken by the second respondent.

13 The Tribunal has assigned cogent and valid reasons to its findings on issue No.1. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. 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 lorry bearing No.AP 9 U 9192, which resulted in the death of the deceased.

14 By the date of accident, the deceased was aged about 28 years. The

Tribunal applied multiplier 17. Except the self serving testimony of P.W.1, there is no other evidence on record to prove that by the date of death the deceased used to earn Rs.8,000/- p.m. Taking into consideration the material available on record, the Tribunal has rightly arrived at a conclusion that the deceased may earn Rs.3,000/- p.m. The Tribunal deducted 1/3rd of the gross income towards personal expenses of the deceased. Thus, the contribution of the deceased to the family would come to Rs.2,000/- p.m or Rs.24,000/- p.a. Hence the total loss of dependency would come to Rs.24,000 X 17 = 4,08,000/-.

15 The Tribunal awarded Rs.15,000/- towards consortium, Rs.10,000/- towards love and affection and Rs.2,000/- towards funeral expenses. Therefore, the total compensation, which the petitioners are entitled to is Rs.4,35,000/-. The amount of compensation awarded by the Tribunal is just and reasonable. However, the petitioners have not filed any appeal or cross objections challenging the quantum of compensation awarded by the Tribunal.

16 Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the second respondent that the compensation awarded by the Tribunal is on higher side.

17 As per the averments made in the petition, the driver of the lorry was having valid and effective driving licence as on the date of accident. In Ex.A.5 – M.V. Inspector's report it is mentioned that the driver of the lorry has not produced driving licence. It is not mentioned in Ex.A.5 that the lorry was inspected in the presence of the driver of the lorry. If really the driver of the lorry was not having valid and effective driving licence, the police might have filed charge sheet against the driver of the lorry under Section 181 of the M.V. Act. If really the driver of the lorry was not having valid and effective driving licence, what prevented the second respondent to issue a notice to the driver of the lorry or owner of the vehicle to produce the driving licence of the driver of the lorry. The second respondent did not take any steps in this direction. The burden of proof lies on the second respondent to establish that the driver of the crime vehicle was not having valid and effective driving licence. Absolutely, there is no material on record to establish that the driver of the lorry was not having valid and effective driving licence as on the date of accident. The material available on record falls short to establish that the first respondent had violated the terms

and conditions of the policy so as to absolve the liability of the second respondent. It is not the case of the second respondent that the lorry was not validly insured with the second respondent as on the date of accident. In the petition it is clearly mentioned the crime vehicle was insured with the second respondent from 06.01.2005 to 05.01.2006. This fact was not denied by the second respondent. The material available on record clinchingly establishes that the crime vehicle was validly insured with the second respondent – insurance company as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

18 In the light of the foregoing discussion, I am unable to accept the contention of the learned counsel for the second respondent that the first respondent had violated the terms and conditions of the insurance policy. I see no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. The appeal lacks merits and bonafides and hence the same is liable to be dismissed.

19 In the result, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petition if any pending in this miscellaneous appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date:9th April, 2015.

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