

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.292 of 2007

JUDGMENT:

The United India Insurance Company Limited-3rd respondent in O.P.No.683 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram (for short, 'the Tribunal') is the appellant. Aggrieved of the order dated 14.09.2006, passed by the Tribunal fastening liability on it granting a sum of Rs.12,28,000/- with interest at 7.5% per annum for the death of one Bevara Sangam Naidu in a road accident that took place on 10.06.2002 near Sarojinidevi Eye Hospital at Hyderabad at about 8-45 a.m., the instant appeal is preferred.

2. The respondent Nos.1 to 4 herein are the petitioners, while the respondent Nos.5 and 6 and the appellant herein, who are the driver, owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the said Sangam Naidu who was working as Sub-Inspector of Police, Visakhapatnam Rural Police Station, was proceeding on a scooter bearing registration No.AND 7112 near Sarojini Devi Eye Hospital, Hyderabad at about 8-45 a.m., during which time, the driver of the bus bearing registration No.AP 9U 999 driven it in a rash and negligent manner and at high speed came behind him and dashed against the scooter, due to which, he fell down and sustained injuries. He was immediately shifted to Premier Hospital, Hyderabad by one M.Seshagirirao, Head Constable No.5786 of Humayan Nagar, Hyderabad, after rendering first aid he was referred to Apollo Hospital, where he succumbed to the injuries while

undergoing treatment. Basing on the report of the Head Constable No.5786, a case was registered in Cr.No.159 of 2002 of Humayun Nagar Police Station under Section 304-A of I.P.C. against the driver of the bus. The petitioners, being the wife, daughter and parents of the deceased, claimed that the said Sangam Naidu was drawing Rs.9,934/- per month as salary, and, therefore, they sought total sum of Rs.25,00,000/- laying the claim under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act').

5. Before the Tribunal, the 1st respondent-driver of the accident vehicle filed counter. While denying the averments mentioned in the petition took a specific stand that the instant claim was foisted against him and since the accident took place nearby police station, the driver was forcibly dragged to the police station by the constable, who went to the spot, and illegally detained for three days. It is also stated that the injuries sustained by the deceased were due to self-accident by the deceased and sought to dismiss the claim. The 2nd respondent-owner of the accident vehicle filed memo adopting the counter filed by the 3rd respondent-Insurance company, requiring the petitioners to prove the manner in which the accident that had occurred, the rash and negligent driving attributed to the driver of the vehicle and a specific stand was taken that the deceased had also contributed to the said accident by his rash and negligent driving and unless the driver, owner and insurance company of the scooter, on which the deceased was proceeding, are added as parties to this case, the claim is bad for non-joinder of parties. It is also stated that the amount claimed is excessive and sought to dismiss the petition.

6. The 3rd respondent-Insurance Company subsequently filed additional counter stating that the investigator's report would show that the accident was self-accident at the time when the deceased while coming on his scooter negotiating to cross-road divider, which was at a

height of 5 to 6 inches to go to other side of the road slipped and fell down along with his scooter, resulting fracture of pelvis, and since the deceased was a police officer, under his influence the police falsely implicated the 1st respondent to enable the petitioners to lay claim for compensation. It is also stated that the witnesses examined by the investigating officer were only police witnesses, and, therefore, sought to dismiss the petition.

7. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the 1st petitioner examined herself as P.W.1 besides examining M.Srinivasa Rao, Head Constable, as P.W.2 and marked Exs.A.1 to A.9 to substantiate their claim; whereas, on behalf of the 3rd respondent, its local branch official, T.Appa Rao was examined as R.W.1 and its Investigator, Jagannadha Raju was examined as R.W.2 and marked Exs.B.1 to B.4.

8. The Tribunal, having elaborately dealt with the evidence of P.W.2 and R.Ws.1 and 2 and Exs.A.1 and A.3, which are copies of F.I.R. and inquest report and Exs.B.3 and B.4, which are copies of medical record and M.V.Inspector's Report, held issue No.1 in favour of the petitioners observing that the evidence would definitely indicate that only due to rash and negligent driving of the driver of the accident vehicle at the relevant time, the accident took place, resulting the death of the deceased. On issue No.2, the Tribunal, taking into consideration the salary drawn by the deceased, more particularly, basing on the contents of Exs.A.6 and A.8, fixing his contribution to the family at Rs.79,200/- per annum, applied multiplier '15' and determined the loss of dependency at Rs.11,88,000/-, besides granting a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards loss of consortium to the 1st petitioner and Rs.10,000/- towards transportation and funeral expenses, and, thus, granted a total sum of

Rs.12,28,000/- and necessary directions were also given as to the apportionment and for withdrawal of the amounts granted towards shares of each of the petitioners.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the police record was brought into existence for the purpose of the claim as the deceased was working in the police department to enable his legal heirs to get the compensation despite the fact that the evidence of R.Ws.1 and 2 would definitely indicate that the bus was not involved in the accident. It is also stated that the Tribunal deviated in fixing the income of the deceased at Rs.9,900/- per month as against the evidence indicating that he was drawing a salary of Rs.7,272/- as per Ex.A.6. It is also stated that the multiplier '15' ought not to have applied and less multiplier is applicable, and the Tribunal was not right in granting Rs.15,000/- each towards loss of estate and consortium. On the ground that excessive compensation was awarded, sought to set aside the order and decree.

10. Heard Sri E.Venugopal Reddy, learned counsel for the appellant-Insurance Company. No representation on behalf of the respondent Nos.1 to 4 herein. Since the steps were not taken against the respondent Nos.5 and 6 herein, appeal was dismissed against them for default as per the orders of this Court dated 18.02.2015. However, dismissal of the appeal for default against the respondent No.6-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others***^[1], wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the

motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

11. The main submission of the learned counsel for the appellant-Insurance Company is that the bus was planted and the accident has been concocted by detaining R.W.1 in nearby police station to the place of accident and the evidence on record through R.Ws.1 and 2 would definitely indicate that two of the witnesses have given notarized affidavits that the bus was not involved in the accident and it was a self-accident met with by the deceased himself at the time when he was crossing the road divider which is in a height of 5 to 6 inches and the very fact that the witnesses are from police department, it is sufficient enough to substantiate the stand of the appellant-Insurance Company.

12. Perused the order under challenge and the evidence on record. The entire controversy in the instant appeal revolves around the involvement of the bus. In this direction, the Tribunal dealt with the said dispute in paragraph-7 under issue No.1. The Tribunal has taken into consideration the evidence of P.W.2 who was working as Head Constable of Humayunnagar Police Station. The version of P.W.2 was that on the date of accident, while he was on patrolling duty, one scooterist and one bus were going in the same direction, suddenly the bus driver took turn, due to which, the rear portion of the bus hit the scooterist, then the scooterist fell down on the road and he shifted the scooterist to Premier Hospital, Hyderabad, and, on the advice of

doctors, he took the scooterist-injured to Apollo Hospital in Jubilee Hills and the injured died in Apollo Hospital while undergoing treatment. In his cross-examination, he answered to a question that his patrolling hours were 8-00 a.m. to 2-00 p.m., but his evidence shows that having signed in the register, he started patrolling duty and he was at a distance of one furlong from the place of accident and witnessed the accident. The Tribunal also dealt with the documentary evidence in the light of the evidence of P.W.2 under paragraph-7(b) of the order and the Tribunal having dealt with the evidence of R.Ws.1 and 2, disbelieved their versions by assigning reasons, which are well appreciated and well reasoned. Thus, the Tribunal having dealt with elaborately the evidence on record, tendered a definite finding on issue No.1 that only due to rash and negligent driving of the driver of the bus, the back side portion of the body of the bus hit the scooterist, resulting in injuries and consequent death of the deceased. It is no doubt true, that R.Ws.1 and 2 were examined by the 3rd respondent-Insurance Company, but the very fact that these two witnesses did not make any attempt to get persons, who have given notarized affidavits, summoned and examined them as to prove the versions contained in the affidavits said to have given is sufficient enough to hold that the evidence of R.Ws.1 and 2 is not material in order to substantiate their stand and to condemn the stand of the petitioners. This apart, the 3rd respondent-Insurance Company has not made any attempts to even examine the driver of the bus who is shown as respondent No.1, who is the best person to speak about taking place of the accident, in the manner in which the petitioners projected it. His evidence is of vital significance in substantiating the stand of the 3rd respondent and the version spoken to by R.Ws.1 and 2. Without making any attempt in that direction by the Insurance Company, it is not open for it now to contend that the accident vehicle, which the respondent No.1 was driving at the relevant time was not involved in the accident and that

the police falsely implicated the respondent Nos.1 and 2 to enable the petitioners to claim compensation merely because the deceased happened to be a police personnel from police department. This apart, the vital circumstance that clinches the issue is, accident had taken place at 8-45 a.m. on 10.06.2002, the F.I.R. was lodged by P.W.2 just within three hours from the time the accident had taken place, and, thus, there is no scope for planting the bus and implicating the respondent Nos.1 and 2, more so, when the deceased was not working in the city but he was working at Visakhapatnam and the version in Ex.A.1, therefore, cannot be disbelieved. Viewed from any angle, the finding recorded by the Tribunal on issue No.1 that, due to rash and negligent driving of the 1st respondent-driver of the bus, the accident had taken place, does not warrant any interference. Concerning determination of loss of dependency and conventional amounts granted towards loss of consortium, loss of estate and towards transportation and funeral expenses, even a glance, at the amounts awarded under these heads appear to be not excessive and are just and adequate warranting no interference at all.

13. For the foregoing reasons, there is no merit in the appeal, and, accordingly, it is dismissed confirming the order and decree dated 14.09.2006 passed by the Tribunal in O.P.No.683 of 2002. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

19th February, 2015

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^[1] 2001(1) ALT 495 (D.B.)