

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.770 OF 2009

JUDGMENT:

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This appeal is preferred by the appellants/respondent Nos.2 and 3 – Insurance Company assailing the judgment and award, dated 28.08.2006 passed in M.V.O.P.No.95 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, (III-Fast Track Court), Warangal at Mahabubabad (for short, 'the Tribunal'), wherein and whereby compensation of an amount of Rs.5,00,000/- was granted to respondent Nos.1 to 3/petitioners.

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

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3. The facts leading to filing of the present appeal are briefly as follows:

On 09.10.2005, at about 9:30 PM, Kasaju Sadananda Chary @ Chary (hereinafter referred to as 'the deceased') was waiting for a bus at Pakhal Centre on Mahabubabad road, in the meantime, the driver of the lorry bearing No.AP-16T-4566 (for short, 'the crime vehicle') came from Pakhal Centre in a rash and negligent manner with high speed and hit the deceased. Due to accident, the deceased died on the spot. The Station House Officer, Narsampet Police Station registered a case in Crime No.185 of 2005 for the offence under Section 304-A I.P.C. against the driver of the crime vehicle. By the time of death, the deceased was aged about 25 years and used to earn Rs.5,000/- per month. Petitioner Nos.1 to 3 are the father, mother and sister of the deceased respectively and they are dependents on the income of the deceased. The crime vehicle, which belongs to respondent No.1, was insured with respondent – Insurance Company. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the

petitioners. The petitioners filed the petition under Section 166 (1) (c) of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 claiming compensation of Rs.5,00,000/-.

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4. Respondent No.1 remained *ex-parte*. Respondent Nos.2 and 3 filed common counter denying the material averments made in the petition *inter alia* contending that there was no negligence on the part of the driver of the crime vehicle. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant and they are not the legal representatives of the deceased. Hence, the petition may be dismissed.

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

(i) Whether the accident took place on account of the rash and negligent driving of the crime lorry bearing No.AP-16T-4566 by its driver?

(ii) Whether the deceased died in the road traffic accident and whether the petitioners are entitled to any compensation for the untimely death of the deceased? If so, to what amount and from whom?

(iii) To what relief?

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6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.12 were marked. On behalf of respondent Nos.2 and 3, no oral evidence was adduced and Ex.B.1 – Insurance Policy was marked.

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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 and allowed the petition by awarding compensation

of Rs.5,00,000/-.

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8. Feeling aggrieved by the judgment and award of the Tribunal, respondent Nos.2 and 3 – Insurance Company filed the present appeal.

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9. Heard Sri N.Mohan Krishna, the learned counsel for respondent Nos.2 and 3 – Insurance Company/appellants and Sri Alladi Ravinder, the learned counsel for the petitioners/ respondent Nos.1 to 3.

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10. The contention of the learned counsel for respondent Nos.2 and 3/appellants is three fold. (1) The finding of the Tribunal that there was no negligence on the part of the deceased is not sustainable; (2) The Tribunal assessed the income of the deceased as Rs.4,710/- without any documentary evidence; and (3) The Tribunal has not applied the multiplier properly.

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11. Per contra, the learned counsel for the petitioners/ respondent Nos.1 to 3 submitted that the Tribunal committed error while restricting the claim of petitioners to Rs.5,00,000/- though they are entitled for an amount of Rs.6,95,240/-.

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

1. Whether there is any contributory negligence on the part of the deceased to cause the accident or not?

2. Whether the compensation awarded under various heads by the Tribunal is just and reasonable or not?

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13. **Point No.1:**

As per the testimony of PWs.1 and 2, the accident occurred due

to the rash and negligent driving of the driver of the crime vehicle. As per the recitals of Ex.A.1 – F.I.R. and Ex.A.5 – charge sheet, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. In this case, PW.2 is the competent person to speak about the manner of the accident. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. It is an admitted fact that by the time of accident, the deceased was waiting for a bus. Therefore, the deceased was either directly or indirectly responsible to cause the accident. The oral testimony of PWs.1 and 2 is fully supported by the recitals of Exs.A.1 and A.5 so far as the manner of the accident is concerned. As per the recitals of Exs.A.2 – Inquest Panchanama and A.4 – Post-mortem Examination report, the deceased died due to injuries sustained in a road accident. Apart from PW.2, the driver of the crime vehicle is a competent person to speak about the manner of the accident. The Insurance Company (respondent Nos.2 and 3) has not taken any steps to examine the driver of the crime vehicle or any other eye witness to the accident to establish the negligence, if any, on the part of the deceased. If the driver of the crime vehicle abstaining himself from entering into the witness box, the Tribunal can draw an adverse inference. The Insurance Company has not adduced any evidence, much less, legally admissible evidence to establish the negligence, if any, on the part of the deceased. The Tribunal, after considering the oral and documentary evidence, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. Therefore, there are no grounds much less valid grounds to set aside the finding of the Tribunal so far as the manner of the accident is concerned.

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14. Having regard to the facts and circumstances of the case and also in the light of the foregoing discussion, 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.

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15. Point No.2:

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As seen from the testimony of PW.1, by the time of accident, the deceased was aged about 25 years. If the deceased is a bachelor, the Tribunal has to take into consideration the age of the deceased to ascertain the multiplier. As per **Sarla Verma v. Delhi Transport Corporation** ^[1], the appropriate multiplier applicable is '18' for the age group between 15 to 25 years. The Tribunal has taken the multiplier as '18'. Therefore, I am unable to accede to the contention of the learned counsel for respondent Nos.2 and 3/appellants that the Tribunal has not applied the correct multiplier. As per the testimony of PW.1, his son used to earn Rs.5,000/- per month as a driver. A perusal of Exs.A.7 and A.9 clearly reveals that the deceased was a driver by profession. The Tribunal assessed the income of the deceased as Rs.4,710/- per month basing on the wages fixed by the Minimum Wages Board, Warangal for the year 2005-06. Per annum, it comes to Rs.56,520/- (Rs.4,710 x 12). The Tribunal has deducted 1/3rd towards personal expenses of the deceased. As per **Sarla Verma's** case, the Tribunal has to take 50% towards personal expenses of the deceased. The deceased may contribute Rs.5,08,680/-(28,260 x 18). The Tribunal has also awarded an amount of Rs.15,000/- towards loss of estate and Rs.2,000/- for funeral expenses. The total compensation arrived at by the Tribunal is Rs.6,95,240/-. However, the Tribunal restricted the claim to Rs.5,00,000/- as claimed by the petitioners. The petitioners have not filed any appeal challenging the finding of the Tribunal for not awarding of an amount of Rs.6,95,240/-. It is not fair on the part of this Court to enhance the compensation in the appeal filed by the Insurance Company.

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16. Having regard to the facts and circumstances of the case,

I am of the considered view that awarding of an amount of Rs.5,00,000/- to the petitioners is just and reasonable to meet the ends of justice. The petitioners are also entitled for interest at the rate of 7.5% from the date of petition till the date of realisation.

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17. In the result, the Appeal is dismissed confirming the judgment and award, dated 28.08.2006 passed in M.V.O.P.No.95 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, (III-Fast Track Court) , Warangal at Mahabubabad. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

04th February, 2015

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