

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.205 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 27.9.2012 passed in O.P. No.382 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nellore.

2. For the sake of convenience, the parties to this miscellaneous appeal will be referred to as they are arrayed before the Tribunal.

3. The facts leading to filing of the present appeal are briefly as follows: The claimants have filed the petition under Section 166 of the M.V. Act claiming a compensation of Rs.4,00,000/- for the death of Dasari Venkata Subbaiah in a motor vehicle accident that occurred on 05.3.2010. On 05.3.2010 at about 3.45 PM, Venkata Subbaiah was proceeding to his house along with push cart. In the mean while, the driver of tractor bearing No.AP 26AD 6921 had driven the same in a rash and negligent manner and dashed the push cart and Venkata Subbaiah (hereinafter referred to as, the deceased), who sustained grievous injuries and died on the spot. By the time of the accident, the deceased was aged about 50 years and used to earn Rs.300/- per day. The first petitioner is the wife and petitioner Nos.2 to 4 are children of the deceased; they are all dependants on the income of the deceased. The tractor, which belongs to first respondent, was insured with the second respondent. Hence, the petition.

4. The first respondent filed counter denying all the averments made in the petition including the manner of the accident, age and income of the deceased, *inter alia*, contending that the accident occurred due to the negligence of the deceased and there was no negligence on the part of the driver of the tractor. The tractor of this respondent was insured with the second respondent as on the date of the accident; hence, the second respondent alone is liable to pay compensation, if any, to the petitioners. Hence, the petition may be dismissed against this respondent.

5. The second respondent filed counter supporting the version put-forth by the first

respondent so far as the manner of the accident, age and income of the deceased as well as the negligence on the part of the deceased in causing the accident. It is further contended that the petitioners are not entitled to claim compensation unless they prove that the driver of the tractor was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioners is highly excessive and exorbitant. Hence, the petition may be dismissed against this respondent.

6. Basing on the above pleadings, the Tribunal framed three issues. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.X1 and B1 were marked.

7. On analysing the oral, documentary evidence and other material available on record, the Tribunal arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor, and allowed the petition in part by awarding a compensation of Rs.3,71,000/- with interest at 7.5% per annum from the date of the petition till the date of deposit against the respondent Nos.1 and 2 jointly and severally. Feeling aggrieved by the order passed by the Tribunal, the second respondent-Insurance Company preferred the present civil miscellaneous appeal.

8. The contention of learned counsel for the second respondent-Insurance Company is two fold:

(1) the Tribunal has not considered the testimony of R.W.1 and recitals of Ex.B1 in right perspective;

(2) the Tribunal failed to appreciate the oral testimony of R.W.1 and Ex.X1; and

(3) the Tribunal failed to consider that by the time of the accident, the deceased was aged more than 60 years.

9 . *Per contra*, learned counsel for the petitioners-claimants submitted that the Tribunal rightly considered the age of the deceased as 50 years basing on the oral and documentary evidence available on record. He further submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

10. Basing on the rival contentions, the only point that arises for consideration in this appeal is:

Whether the Tribunal has committed any error while adopting the multiplier?

Point:

11. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the tractor, which resulted in the death of the deceased. Though the Insurance Company filed the appeal, no specific ground is taken, in the grounds of appeal, challenging the finding of the Tribunal on issue No.1. Basing on the oral testimony of P.Ws.1 and 2 and Exs.A1 to A4, the Tribunal arrived at the conclusion that the accident occurred due to rash and negligent driving of the driver of the tractor, which resulted in the death of the deceased. I am fully agreeing with the finding recorded by the Tribunal on issue No.1.

12. As per the averments made in the petition, the deceased was aged about 50 years by the time of his death. In the chief examination, P.W.1 deposed that her husband was aged about 50 years whereas in the cross-examination she deposed that her husband was aged about 40 years. At another stage of the cross-examination, she deposed that as per ration card her husband was aged about 64 years by the time of his death. As per the testimony of R.W.1, the deceased was aged about 45 years as on 01.1.1995. If the testimony of R.W.1 is taken into consideration, the deceased was aged about 60 years by the time of his death. P.W.1 and R.W.1 have given different versions with regard to age of the deceased. It is needless to say that correct age may not reflect in the voters list and ration cards more particularly in case of uneducated persons. In Ex.A2 inquest panchanama and in Ex.A3 Post Mortem Examination report, the age of the deceased was mentioned as 50 years. In the petition, the age of the second petitioner, who is the elder son of the deceased, is mentioned as 29 years. The M.V. Act is a piece of beneficial legislation. Basing on the facts pleaded and proved, if two views are possible, the Tribunal or court has to lean on the view favourable to the claimants. In view of the factual position, this court is of the view that the age of the deceased may be around 51 to 55 years by the date of his death.

13. As per the decision in **Sarla Verma v DTC**, the appropriate multiplier applicable for the age group of 51 to 55 years is '11'. As rightly pointed out by the learned counsel for the second respondent, the Tribunal committed error while adopting the multiplier as '13'. The Tribunal rightly taken the income of the deceased as

Rs.3,000/- per month. After deducting $\frac{1}{4}^{\text{th}}$ of the income towards personal expenses of the deceased, his contribution to the family would be Rs.2,250/- per month. Thus, the loss of dependency comes to (Rs.2,250 X 12 X 11) Rs.2,97,000/-. The Tribunal rightly awarded Rs.10,000/- towards loss of consortium, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate. In all, the petitioners are entitled to Rs.3,17,000/- towards compensation but not Rs.3,71,000/- as awarded by the Tribunal. The petitioners have not filed appeal or cross-objections challenging the quantum of compensation. This is an appeal filed by the Insurance Company; therefore, this court has no option except to reduce the quantum of compensation from Rs.3,71,000/- to Rs.3,17,000/-.

14. Having regard to the facts and circumstances of the case, I am of the considered view that the Tribunal has committed error while adopting the multiplier as '13' instead of '11'. Consequently, the petitioners are entitled to an amount of Rs.3,17,000/- towards compensation. Accordingly, the point is answered.

15. In the result, the civil miscellaneous appeal is allowed in part reducing the quantum of compensation from Rs.3,71,000/- to Rs.3,17,000/-. The award passed by the Tribunal on other aspects remains undisturbed. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any pending in this miscellaneous appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 08.10.2015.

YS