

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.68 of 2013

JUDGMENT:

This appeal is filed by the appellant-insurance company under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 04.06.2012 passed in O.P.No.462 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Karimnagar, at Jagtial.

2. The parties will be referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal, in brief, are as follows:

The petitioner filed the petition under Section 166(1)(c) of Motor Vehicles Act, claiming compensation of Rs.2,00,000/- for the death of his father, by name, Boddu Mallaiah in a motor vehicle accident that occurred on 07.06.2007. The accident occurred due to rash and negligent driving of the driver of the school bus bearing No.AP-15-X-7463. By the time of accident, Mallaiah (hereinafter referred as 'the deceased') was aged about 55 years and used to earn Rs.4,000/- per month. The petitioner being a son of the deceased filed the petition claiming compensation.

4. The first respondent filed counter denying all the material averments made in the petition including the manner of the accident. The school van (crime vehicle) bearing No.AP-15-X-7463 which belongs to second respondent was insured with the third respondent company as on the date of accident. Therefore, the respondent No.3 alone is liable to pay compensation to the petitioner. The second respondent filed a memo adopting the counter filed by the third respondent. The third respondent filed counter and denied 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 negligent act of the deceased and there was no negligence on the part of the driver of the van bearing No.AP-15-X-7463. The petitioner is not entitled for compensation unless he establishes that the driver of the crime vehicle was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner is on higher side. Hence, the petition may be dismissed.

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

1. Whether the accident had occurred due to rash and negligent driving of the offending vehicle bearing No.AP-15-X-7463 by its driver?
2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
3. To what relief?

6. During the course of enquiry, on behalf of the petitioner, PWs.1 to 4 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, R.W.1 was examined and no documents were marked.

7. On appraising oral and 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 school van bearing No.AP-15-X-7463, which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.1,86,000/- with interest at 7.5% per annum from the date of petition till the date of deposit of the award amount.

8. Feeling aggrieved by the judgment and award passed by the Tribunal, the third respondent-insurance company preferred the

present appeal.

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

1. The petition is not maintainable for non-impleading of the mother of the petitioner.
2. The petitioner herein is not a dependant on the income of the deceased, therefore, the petition is liable to be dismissed.

10. Per contra, learned counsel for the petitioner submitted that the mother of the petitioner has been residing at her parents house since long time, therefore, she is not entitled to claim compensation. He further submitted that the Tribunal rightly allowed the petition basing on the recitals of Ex.A7.

11. Basing on the above rival contentions, the points that arise for consideration in this appeal are as follows:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the school van bearing No.AP-15-X-7463, which resulted in the death of the deceased?
2. Whether the petition is not maintainable?

12. **POINT No.1:** The oral testimony of P.W.1 is no way helpful to prove the manner of the accident as he is not an eyewitness to the accident. As per the testimony of P.W.2, the driver of the school van bearing No.AP-15-X-7463 had driven the same in a rash and negligent manner and dashed the deceased. If the testimony of P.W.2 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the school van. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. The oral testimony of P.W.2 is supported by the recitals of Ex.A1 FIR, Ex.A4 charge sheet, Ex.A5 Form No.54 and Ex.A6 Motor Vehicles Inspector's Report so far as the manner of

the accident is concerned. As per the recitals of Ex.A2 inquest report and Ex.A3 Post-mortem report, the deceased died due to the injuries sustained in a road accident that occurred on 07.06.2007. The third respondent did not choose to examine the driver of the school van or any of the eye witness to the accident to substantiate the stand taken by it. Basing on the oral testimony of P.Ws.1 and 2 and Exs.A1 to A5 and A6, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the school van, which resulted in the death of the deceased. Respondents 1 and 2 did not choose to file appeal challenging the finding of 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 school van, which resulted in the death of the deceased.

13. **POINT No.2:** The petitioner alone filed the petition claiming compensation for the death of his father. During the pendency of the OP, respondents 4 and 5 were added. As per the case of respondents 4 and 5, the petitioner is not the son of the deceased. To substantiate the same, the 4th respondent examined himself as R.W.1. As per the testimony of R.W.1, the petitioner herein filed a civil suit against him. His testimony further reveals that he entered into a compromise with the petitioner in the civil suit and the Court referred the matter to Lok Adalat, which passed the award dated 25.09.2010. Ex.A7 is the certified copy of the award. If really the petitioner is not the son of the deceased Mallaiah, what prompted the fourth respondent to enter into a compromise with the petitioner. The recitals of Ex.A7 negative the contention of respondents 4 and 5 that the petitioner is not the son of late Mallaiah. For obvious reasons, the respondents 4 and 5 did not choose to appear before this Court.

14. Learned counsel for the third respondent submitted that the wife of the deceased is not impleaded as one of the respondent, therefore,

the petition is not maintainable. The third respondent has not taken a specific plea in the counter that the petition is liable to be dismissed for non-impleading of the wife of deceased Mallaiah. The third respondent – insurance company advanced this arguments basing on the oral testimony of P.Ws.3 and 4. The third respondent has not taken any steps to implead the mother of the petitioner as one of the parties to the proceedings. The third respondent kept quiet during the pendency of the OP and filed this appeal. Even in the appeal also, the mother of the petitioner is not impleaded as one of the party to the proceedings. Any amount of oral or documentary evidence without pleading is of no avail. As rightly pointed out by the Tribunal, the mother of the petitioner did not choose to come on record knowing fully well about the pendency of OP. It appears that the mother of the petitioner is not interested to come on record for the reasons best known to her. The only remedy available to the mother of the petitioner at this point of time is to recover her share from the petitioner by following the procedure contemplated under law. The third respondent without taking any steps during the pendency of the appeal is not entitled to challenge the judgment and award passed by the Tribunal. By the time of death, the deceased was aged about 55 years. The appropriate multiplier to be taken for the age of 55 years is '11'. As per the testimony of P.W.1, his father used to earn Rs.4,000/- per month. Taking into consideration the age and other attending circumstances, the Tribunal arrived at a conclusion that the deceased may earn Rs.2,000/- per month. Even by attending to a coolly work, one may get not less than Rs.100/- per day. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the third respondent that the quantum of compensation awarded by the Tribunal is on higher side. The Tribunal awarded an amount of Rs.1,86,000/- towards compensation which is just and reasonable. There are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal. The appeal lacks merits and

bonafides and the same is liable to be dismissed.

15. Accordingly, M.A.C.M.A. is dismissed. No costs. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

14th September 2015
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