

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.799 of 2009

JUDGMENT:

This appeal is filed by the petitioners challenging the judgment and award, dated 07.09.2006 passed in O.P.No.787 of 2005 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge, at Karimnagar.

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

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

On 16.08.2004 at about 9:30 p.m., one Indarapu Satyanarayana (hereinafter referred to as 'the deceased') was proceeding to his house at Manchirial from ACC Colony after distribution of milk. On the way, the lorry bearing No.AP-15-U-8441 was stationed on the middle of the road without parking light. The deceased without expecting that the vehicle would be parked on the middle of the road dashed to the stationed lorry. The deceased sustained grievous injuries on various parts of the body due to accident. Immediately after the accident, the deceased was shifted to Government Civil Hospital, Mancherial from there to M.G.M.Hospital, Warangal, where he succumbed to injuries. The Station House Officer, Mancherial registered a case in Crime No.276 of 2004 under Section 304-A IPC against the driver of the lorry. By the time of death, the deceased was aged about 35 years and used to earn Rs.6,000/- per month as a milk vendor and also an employee in a bakery. Petitioner No.1 is the wife and petitioner Nos.2 to 4 are the children and petitioner No.5 is the mother of the deceased and they are dependents on the income of the deceased. The first respondent is the owner of the lorry, which was insured with the second respondent company as on the date of incident. Therefore,

respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioners. Hence, the petitioners filed the claim petition claiming compensation of Rs.5,00,000/-.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the material averments made in the petition *inter alia* contending that at the time of accident, the deceased drove the kinetic motor cycle in a rash and negligent manner and dashed the stationed lorry from behind. The driver of the lorry is no way responsible to cause the accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. The respondent company may be permitted to take all the defences available to it under the Motor Vehicles Act.

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

1. Whether the accident took place due to the rash and negligent driving of the vehicle, i.e., lorry bearing No.AP-15-U-8441 by its driver?
2. Whether the petitioners are entitled for the compensation? If so, what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 to 4 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked with consent.

7. Basing on the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the kinetic motor cycle by the deceased as well as the driver of the lorry in the ratio of 75% and 25% respectively and allowed the petition in part by awarding a compensation of Rs.66,375/-

8. Being not satisfied with the judgment and award of the Tribunal, the petitioners preferred the present appeal.

9. Heard Sri D. Seshasayana Reddy, the learned counsel for the petitioners/appellants and Sri B.Naresh, learned standing counsel for the respondent company.

10. Learned counsel for the petitioners submitted that the finding of the Tribunal on Issue No.1 is not sustainable either on facts or on law. He further submitted that the Tribunal discarded Ex.A6 on erroneous grounds and awarded meagre amount of compensation. Per contra, learned counsel for the second respondent submitted that the Tribunal considered the oral and documentary evidence in right perspective and arrived at a conclusion that the deceased was more responsible to cause the accident. He further submitted that the amount of compensation awarded under various heads is just and reasonable.

11. Now the points that arise for consideration in this appeal are as follows:

1. Whether the finding of the Tribunal that the accident occurred due to rash and negligent driving of the deceased as well as the driver of the lorry in the ratio of 75% and 25% is sustainable?
2. Whether the Tribunal has awarded fair, just and reasonable compensation to the petitioners or not?

12. As per the testimony of P.Ws.1 to 3, the accident occurred due to the negligent parking of the lorry on the middle of the road. P.W.1 is not an eye witness to the accident. Therefore, her testimony is no way helpful so far as the manner of the accident is concerned. As per the testimony of P.Ws.2 and 3 the accident occurred due to wrong parking of the lorry on the middle of the road. As seen from the testimony of P.W.2 and 3, the width of the road is 100 ft and the lorry was stationed on the middle of the road without parking lights. As rightly observed by

the Tribunal, by the time of accident the deceased was not proceeding on the extreme left side of the road. The fact remains at the time of accident the deceased was also proceeding on the middle of the road. A perusal of Ex.A1 and A5 reveal that the police registered a criminal case against the driver of the lorry. It is the duty of the Tribunal or the Court to scrutinise the oral and documentary evidence meticulously in case of head on collision between two vehicles in order to fix the percentage of negligence on the part of each driver of the vehicles. The driver who stationed the lorry on the middle of the road ought to have put on the parking lights. The fact remains that the driver of the lorry stationed the same on the middle of the road without putting parking lights. The driver of the lorry ought to have acted as an ordinary prudent man while parking the vehicle on the road more particularly in night time. A duty is cast on the drivers of the vehicles to visualise the possibility of parking of the vehicles on the road for obvious reasons. In the instant case, the petitioners have taken a specific plea in the claim petition that the deceased without anticipating the parking of the lorry, dashed it. The accident occurred at about 9.30 p.m. Had the deceased taken a reasonable care, there is every possibility to avoid the accident in this case. The deceased while proceeding on a scooter, hit the stationed lorry from its behind. This itself speaks the negligence on the part of the deceased also. The fact remains that there was negligence on the part of the deceased as well as the driver of the lorry. It is the duty of the Tribunal to apportion the negligence on the part of both vehicles drivers. The finding of the Tribunal that the negligence on the part of the deceased at 75% was not based on sound reasoning. There is no straight jacket formula to fix the percentage of negligence on the part of the drivers. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased as well as the driver of the lorry were equally responsible to cause the accident. Therefore, fixing of the negligence in ratio of 50:50 is justified. There is no dispute with

regard to the factum of death of the deceased.

13. **POINT No.2:** As per the testimony of P.W.1 and P.W.4, the deceased used to earn Rs.6,000/- p.m. As per the testimony of P.W.4, the deceased was working in his bakery on a monthly salary of Rs.3,500/- as on the date of accident. Except the letter head, nothing is produced before the Tribunal to establish that the deceased has been working in Rama Krishna Bakery for the last seven years. The possibility of issuance of this type of certificates (Ex.A6) with an intention to help the family members of the deceased cannot be ruled out. The Court has to scrutinise the salary certificate meticulously in order to ascertain the correct income of the deceased. Some times it may not be possible for the claimants to produce the documentary evidence to prove avocation and income of the deceased. The Tribunal has to assess the income of the deceased taking into consideration the prevailing cooli rate and other relevant aspects. The accident occurred in the year 2004. The Tribunal has taken the income of the deceased as Rs.2,000/- per month, which is on lower side. Even in the year 2004 also by attending a cooli work, one may get Rs.100/- per day. Taking into consideration the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.3,000/- per month even by attending a cooli work. Out of which, some amount has to be deducted towards personal expenses of deceased basing on the number of dependants. In this case, the dependants are '5' in number. Therefore, the Tribunal has to deduct $\frac{1}{4}^{\text{th}}$ amount instead of $\frac{1}{3}^{\text{rd}}$ towards personal expenses in view of the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**^[1]. If $\frac{1}{4}^{\text{th}}$ is deducted from the income of the deceased, the contribution comes to Rs.2250/-per month, per annum it comes to Rs.2250 X 12 = Rs.27,000/-. The appropriate multiplier in the age group 31 to 35 years is '16' in view of the decision in **Sarla Verma** (1 supra). Then, the loss of dependency comes to Rs.27,000/- X 16 =

Rs.4,32,000/-. A perusal of the record reveals that the Tribunal awarded a meagre amount under non-conventional heads. In my view, the petitioners also entitled for an amount of Rs.50,000/- under non-conventional heads. Hence, the total compensation comes to Rs.4,32,000/- + Rs.50,000/- = Rs.4,82,000/-. Accordingly, point No.2 is answered in favour of the petitioners.

14. In view of finding of this Court on issue No.1, the petitioners have to forego 50% of the compensation amount. Hence, the loss of dependency comes to Rs.2,41,000/-(Rs.4,32,000 - Rs.2,41,000). It is the duty of the court to apportion the compensation among the petitioners. Therefore, out of the compensation amount of Rs.2,41,000/-, petitioner No.5 is entitled for Rs.10,000/-, petitioner No.1 is entitled for Rs.1,41,000/- and petitioners 2, 3 and 4 are entitled to Rs.30,000/- each. The petitioners are also entitled for interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. It is not in dispute that the lorry bearing No. AP 15 U 8441 which belongs to first respondent was insured with second respondent company under Ex.B1 policy as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation.

15. In the result, the appeal is allowed in part enhancing the compensation from Rs.66,375/- to Rs.2,41,000/- with interest at 7.5% per annum from the date of petition till the date of realisation. Respondents 1 and 2 are jointly and severally directed to deposit the compensation amount with interest within two months from the date of receipt of copy of this order. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

2nd February, 2015
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