

The Hon'ble Sri Justice T. Sunil Chowdary
MACMA No.916 OF 2009

JUDGMENT:

1 This appeal is preferred by the petitioners-claimants assailing the judgment and award dated 16.12.2008 passed in MVOP No.234 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Ongole wherein and whereby an amount of Rs.3,52,000/- was awarded to the petitioners, as against the claim of Rs.7.00 lakhs.

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

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

4 On 05.03.2006 P. Ramudu (hereinafter referred to as 'the deceased') along with others and a cow was proceeding to Bestavaripeta in an auto bearing registration No.AP 27 V 9474. When the auto reached Donakonda – Kanigiri and Podili-Markapur cross road junction, the driver of the lorry bearing No.AP 29-T-8883 (hereinafter referred to as 'the crime vehicle') had driven the same in a rash and negligent manner and hit the auto in which the petitioner was traveling from behind. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle against which the Station House Officer, Podili police station registered a case in Cr.No.30 of 2006. In the said accident, the deceased sustained multiple injuries and died on the way to government hospital, Podili. It is the case of the petitioners that by the date of accident, the deceased was aged about 25 years and was earning Rs.5,000/- p.m. The petitioners are dependants on the income of the deceased. Hence the petitioners being the legal representatives of the deceased filed the petition seeking compensation of Rs.7.00

lakhs from the respondents. The crime vehicle, which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

5 The first respondent who is the owner of the crime vehicle remained ex parte. The second respondent – insurer filed counter denying the material averments made in the petition, inter alia contending that the accident occurred due to the rash and negligent driving of the driver of the auto and that there was no negligence on the part of the driver of the crime vehicle to cause the accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. It is the duty of the petitioners to prove that the driver of the crime vehicle was having valid and effective driving licence to drive the lorry as on the date of accident. Therefore, this respondent is not liable to pay compensation to the petitioners. Hence the petition may be dismissed.

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

- i. Whether the death of the deceased is due to rash and negligent driving of the driver of the crime vehicle?
- ii. What is the correct age and income of the deceased as on the date of accident?
- iii. Whether the petitioners are entitled for compensation? If so, to what extent and from whom?

7 Before the Tribunal, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, though no oral evidence was let in, but Ex.B.1 was marked.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle as well as the driver of the auto and fastened the liability in the ratio of 80 : 20 and awarded a compensation of Rs.3,52,000/- to the petitioners. Not being satisfied with the said amount of compensation, the claimants preferred this appeal.

9 The contention of Sri N.Krishna Murthy, the learned counsel for the petitioners is three fold.

- a. The Tribunal has not applied the correct multiplier.
- b. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and the driver of the auto in which the petitioner was travelling in the ratio of 80% : 20% is not supported by any evidence.
- c. The amount of compensation awarded under various heads is too meager.

10 Having received notices, the respondent Nos.1 and 2 did not choose to appear before this Court. Hence I am inclined to proceed with the matter on merits.

11 The following points would arise for consideration in this appeal.

- i. Whether there was any negligence on the part of the driver of the auto to cause to the accident?
- ii. Whether the Tribunal has awarded just and reasonable compensation?

POINT NO.1:

12 In order to prove the manner of accident the first petitioner was examined as P.W.1 and got marked Exs.A.1, A.4 and A.5. PW.2 is an eyewitness to the accident. A perusal of the testimony

of P.W.1 clearly reveals that she is not an eyewitness to the accident, therefore, her testimony is not much helpful in this regard.

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 lorry and there was no negligence on the part of the driver of the auto. In the cross examination of P.W.2, nothing is elicited to shake his testimony so far as the manner of accident is concerned. The oral testimony of P.Ws.1 and 2 is supported by the recitals of Exs.A.1 and A.5. As per the recitals of Ex.A.5-charge sheet the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. In para No.4 of the judgment, the Tribunal gave a specific finding that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. In the very same paragraph, the Tribunal also gave a finding that because of lover load, there is every possibility of negligence on the part of the driver of the auto also. Basing on the above findings, the Tribunal apportioned the rashness and negligence on the part of the drivers of both lorry and the auto in the ratio of 80% : 20%. Apart from P.W.2, the driver of the crime vehicle is the competent person to speak about the manner of the accident and the negligence, if any, on the part of the driver of the auto. The respondents have not taken any steps to examine the driver of the crime vehicle or any other eyewitness to the accident to establish the negligence, if any, on the part of the driver of the auto. In such circumstances, the Tribunal is not justified in apportioning the rashness and negligence on the part of the drivers of the crime vehicle and the auto in the ratio of 80% : 20%.

13 At this juncture, this Court is placing reliance on the following judgments:

a. ***Kumari K. Pushpa Latha Vs. E. Murali Manohar Rao and***

Another^[1] wherein this Court held at para No.3 as follows:

Section 128 (1) of the Act is an independent provision under the Motor Vehicles Act and is not one which is in Chapter XII of the Motor Vehicles Act, 1988 dealing with Claims Tribunals. Violation of safety measures provided under Section 128 (1) of the Act may result in challenging or charge sheeting rider of the motor cycle and imposing penalty on him/her. Violation of Section 128 (1) of the Act cannot be ipso facto taken as a mitigating factor in determining quantum of compensation payable to an injured or dependants of the deceased in a motor accident case. Whether there was triple riding or not, in case there is no negligence on the part of two wheeler rider, then it cannot be a mitigating factor for disallowing certain percentage of compensation towards contributory negligence on the part of the motor cycle rider. It all depends upon facts and circumstances of that case and evidence let in by the parties in that case. This Court intends to make it clear that violation of safety measures contained either in Section 128 (1) of the Act or in any other provision cannot be taken into consideration to disallow compensation payable for an injured or dependants of the deceased in a motor accident case or any part thereof.

b. ***Syed Sadiq Vs. Divisional Manager, United India***

Assurance Company^[2] wherein the Hon'ble apex Court at para No.28 held as follows:

The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellants/claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants/claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence,

which has been upheld by the High Court, is set aside.

c. ***Meera Devi and another Vs. Himachal Pradesh Road***

Transport Corporation and others^[3] wherein the Hon'ble apex Court at para No.10 held as follows:

10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.

d. ***Sombathina Ramu Vs. T. Srinivasulu and Anr.***^[4] wherein this apex Court at para No.10 held as follows:

“Therefore, the legal principle that emerges is that only in cases of contributory negligence, the contributor of such negligence cannot make a claim for payment of compensation in whole without accounting for his part of contribution. In other words, the extent of the role played by him as assessed by the Court will be taken into account and consideration for the purpose of setting off to a corresponding extent the payment of compensation for the injuries sustained. But, however, in cases of composite negligence, the suitor, having no role to play either directly or remotely and having not contributed any negligence to the causative factors of the injury, is therefore entitled to seek compensation from all of them or any one of them. It is a choice left to him. Correspondingly, it does not lie in the mouth of one of the wrong doers to insist upon the other or all the wrong doers also either to be impleaded or proportionately mulcted with the obligation to compensate the injured.”

14 The facts of the case on hand are almost similar to the facts of the cases 1 to 3 cited supra. The finding of the Tribunal is based on assumptions and presumptions, therefore, the same is liable to be set aside. Having regard to the facts and circumstances of the

case, and also the principle enunciated in the cases cited supra, I am of the considered view that the finding of the Tribunal that there was contributory negligence on the part of the driver of the auto to cause the accident to the extent of 20% is not sustainable either on facts or on law and the said finding is hereby set aside. In the light of the foregoing discussion, I have no hesitation to hold that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle only, which resulted in the death of the deceased. The point is answered accordingly.

POINT No.2:

15 By the date of accident, the deceased was aged 25 years. The Tribunal applied multiplier 17. As per the ratio laid down in **Sarla Verma Vs. Delhi Transport Corporation**^[5], the appropriate multiplier to be applied for the age group of 15 to 25 years is 18. Therefore, I am of the considered view that the Tribunal has not applied the appropriate multiplier. Except the self serving testimony of P.W.1, there is no other convincing evidence on record to prove that by the date of accident, the deceased was earning Rs.5,000/- p.m. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. The Tribunal, taking into consideration the oral and documentary evidence available on record, arrived at a conclusion that the deceased may earn Rs.3,000/- p.m. The Tribunal has rightly assessed the monthly income of the deceased. The Tribunal has also rightly deducted 1/3rd towards personal expenses of the deceased. The deceased may contribute Rs.2,000/- p.m. or Rs.24,000/- p.a to the family members. Therefore, the loss of dependency would come to Rs.24,000/- X 18 = Rs.4,32,000/-.

16 The Tribunal awarded Rs.30,000/- towards loss of

consortium, funeral expenses and loss of estate. However, In view of the principle laid down in **Ramilaben Chinubhai Parmar and Others Vs. National Insurance Co. & Others**^[6], I am inclined to award an amount of Rs.50,000/- as conventional amount to the petitioners instead of amount under different heads as awarded by the Tribunal.

17 Thus, in all, the amount of compensation to which the petitioners are entitled, under various heads, is as follows:

Loss of dependency:	Rs.4,32,000/-
Amount under Conventional Head:	Rs. 50,000/-
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TOTAL	Rs.4,82,000/-
	=====

18 The petitioners are also entitled to interest at 7.5% p.a. from the date of filing of the petition till the date of deposit on the enhanced amount of compensation i.e. Rs.1,30,000/-. However, the petitioners are entitled to interest at 9% on Rs.3,52,000/- as awarded by the Tribunal.

19 The first respondent being the owner of the lorry bearing No.AP 29-T-8883 is vicariously liable for the wrongful acts done by his employee. It is not in dispute that as on the date of accident, the auto was insured with the second respondent. Therefore, the second respondent has to indemnify the liability of the first respondent. Hence the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

20 In the result, the appeal is allowed in part, enhancing the compensation from Rs.3,52,000/- to Rs.4,82,000/- directing the respondent Nos.1 and 2 to jointly and severally deposit the amount with interest at 7.5% p.a. on the enhanced amount of compensation of Rs.1,32,000/- only from the date of filing of the petition till the date of deposit within two months from the date of receipt of a copy of

this order. However, it is made clear that the respondents are directed to pay interest at 9% p.a. on the amount of Rs.3,52,000/- as awarded by the Tribunal. Petitioner Nos.1 and 2 are equally entitled to the enhanced compensation. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: March 11, 2015.

kvsn

[\[1\]](#) 2013 (2) ALD 659

[\[2\]](#) 2014 (2) ALD 133 (S.C)

[\[3\]](#) (2014) 4 SCC 511

[\[4\]](#) 2008 (3) ALD 362

[\[5\]](#) 2009 ACJ 1298 (SC)

[\[6\]](#) (2014 ACJ 1430)