

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.926 of 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the appellant challenging the judgment and award, dated 05.11.2008 passed in M.V.O.P.No.104 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal (for short, 'the Tribunal').

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 04.01.2007 at about 10.30 P.M, one Merige Nagaraju along with B.Dastagri were proceeding to Jillella village from Perusomula on the motorcycle bearing registration No.AP21-K-4394. When they reached Gunjalapadu cross roads at Koilakuntla, the driver of auto bearing registration No.AP21-W-6282 came in rash and negligent manner at a high speed hit the motorcycle of the Nagaraju (hereinafter referred to as 'the deceased'). The deceased died on 05.01.2007 while undergoing treatment in Government General Hospital, Kurnool. By the time of accident the deceased was aged about 48 years and used to earn Rs.9,000/- per month while working as Government employee. The petitioners are dependants on the income of the deceased. The auto bearing registration No.AP21-W-6282, which belongs to the first respondent, was insured with the second respondent company. Therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation of Rs.8,00,000/- to the petitioner.

4. The first respondent remained *ex-parte*. The second respondent filed written statement denying all the material averments made in the petition *inter alia*

contending that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased and there was no negligence on the part of the driver of the auto. There is no insurance coverage to the motorcycle bearing registration No.AP21-K-4394. Therefore, the petitioners in collusion with the Station House Officer, Koilakuntla, foisted a false case against the driver of the auto bearing registration No.AP21-W-6282. It is the duty of the petitioners to prove that the driver of the auto was having valid and effective driving license as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant.

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

1. Whether the accident occurred due to the rash or negligent driving of the driver of the auto bearing No.AP21-W-6282 resulting in the death of deceased Merige Nagraju?
2. Whether the petitioners are entitled for compensation, if so, to what amount and from which of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.A.1 to A.7 and Exs.X.1 to X.3 were marked. On behalf of the second respondent, RWs.1 to 3 were examined and Exs.B.1 and B.2 were marked.

7. The Tribunal, basing on oral and 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 auto and allowed the petition by awarding compensation of Rs.8,00,000/- with interest @ 7.5% per annum from the date of petition till the date of realization.

8. Feeling aggrieved by the judgment and award of the Tribunal, the second

respondent/insurance company preferred the present appeal.

9. Heard Sri N.Mohan Krishna, learned counsel for the appellant, and Sri G.Sravan Kumar, learned counsel for the claimants.

10. The learned counsel for the appellant submitted that the finding of the Tribunal that the accident occurred due to the negligence of the auto driver is not supported by oral and documentary evidence. He further submitted that the deceased was not having driving license thereby he also contributed to cause the accident. The amount of compensation awarded under various heads is on higher side.

11. Per contra, the learned counsel for the claimants submitted that the Tribunal rightly considered the oral and documentary evidence and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto which resulted in the death of the deceased. He further submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

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

1 . Whether the deceased was also equally responsible to cause the accident or not?

2 . Whether the Tribunal has awarded just and reasonable compensation or not?

13. Point No.1:

To prove the manner of the accident, the petitioners examined PWs.1 and 2 and got marked Ex.A.1, A.4 and A.5. To demolish the case of the petitioners, R.W.1 was examined. A perusal of the testimony of P.W.1 reveals that she is not an eye witness to the accident, therefore, her testimony is not much helpful to determine at whose fault the accident occurred. As seen from the testimony of P.W.2, by the time of accident he was traveling on the motorcycle as pillion rider. As per the testimony of P.W.2, the driver of the auto had driven the same in rash and negligent manner

and dashed against the motorcycle. In the cross-examination, P.W.2 denied the suggestion that there was no negligence on the part of the driver of auto. A careful perusal of the testimony of R.W.1 reveals that he is not an eye witness to the accident. Therefore, his testimony is no way helpful to prove the manner of the accident. 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.

14. If really the accident occurred due to the negligent driving of the motorcycle by the deceased, what prevented the insurance company either to examine the driver of the auto or any other eye witness to the accident? For one reason or the other, the second respondent has not taken any steps to examine any person, who witnessed the accident, to substantiate its stand. The second respondent has not adduced oral or documentary evidence to substantiate its stand that the petitioners in collusion with the police foisted a false case against the driver of the auto. Mere taking of the plea itself would not amount to prove the stand taken by the second respondent.

15. As per the testimony of R.W.2, the deceased has not obtained driving license from the R.T.O, Nandyal. It is a known fact that an individual can obtain driving license anywhere in the State of Andhra Pradesh. Merely because the deceased has not obtained driving license from the R.T.O, Nandyal, that itself is not a sufficient ground to hold that the deceased was not having valid and effective driving license. As per the recitals of Ex.A.1-certified copy of F.I.R and Ex.A.5-certified copy of charge sheet, the accident occurred due to the negligence of the driver of the auto. As per the recitals of Ex.A.4-certified copy of M.V.I. Report, there was no mechanical defect in the auto.

16. No issue has been framed by the Tribunal with regard to the contributory negligence, if any, on the part of the deceased. The second respondent has not adduced any evidence to establish the contributory negligence on the part of the deceased. If the driver of the crime vehicle abstains himself from entering into the witness box, the Tribunal can draw an adverse inference. The burden of proof lies on the second respondent to establish that the deceased was also equally responsible to cause the accident. The second respondent has not adduced any evidence much less legally admissible evidence to substantiate its stand. The

learned counsel for the petitioners has drawn my attention to the following judgments:

Kumari K. Pushpa Latha Vs. E. Murali Manohar Rao and Another 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.

Syed Sadiq Vs. Divisional Manager, United India Assurance Company 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.

Meera Devi and another Vs. Himachal Pradesh Road Transport Corporation and others 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.

17. Having regard to the facts and circumstances of the case and also the principles enunciated in the decisions cited supra, I am unable to accede to the contentions of the learned counsel for the second respondent that the deceased was also responsible to cause the accident. The Tribunal has assigned cogent and valid reasons to its findings.

18. I am fully agreeing with the findings recorded by the Tribunal. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal on issue No.1.

19. Point No.2

The oral testimony of P.Ws.1 and 3 coupled with Ex.A.6 clearly reveals that by the time of accident the deceased was drawing gross salary of Rs.10,003/- and net salary of Rs.8,758/-. The Tribunal has taken the gross salary of the deceased to determine the loss of dependency. The deceased was aged about 50 years at the time of his death. Therefore, the Tribunal has applied multiplier '11'. The Tribunal arrived at a conclusion that the loss of dependency comes to Rs.8,80,000/-. The Tribunal also awarded Rs.2,500/- towards funeral expenses and Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium. The Tribunal awarded Rs.8,90,000/- under different heads. The claimants filed the petition claiming Rs.8,00,000/- only. Therefore, the Tribunal restricted the claim amount to Rs.8,00,000/- only. A perusal of the record clearly reveals that the Tribunal has awarded just and reasonable compensation. The contention of the learned counsel for the second respondent that the amount of compensation awarded by the Tribunal is on higher side is not sustainable. The appeal lacks merit and bonafides. Hence, the appeal is liable to be dismissed.

20. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 25th March 2015

MVA