

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.781 of 2005

JUDGMENT:

The 3rd respondent-United India Insurance Company Limited in M.O.P.No.439 of 1989 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Visakhapatnam (for short, 'the Tribunal') preferred the instant appeal challenging the order dated 08.04.1993, whereby and whereunder the Tribunal granted a sum of Rs.1,69,000/- with interest at 12% per annum as compensation as against the claim for Rs.5,00,000/- laid under Section 110 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Sanjeeva Rao Mahadev in a road accident.

2. The respondent Nos.1 to 4 herein are the petitioners, while the respondent Nos.5 and 6 and the appellant herein, who are the driver, owner and insurer of the lorry bearing registration No.ADH 799 respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the said Sanjeeva Rao Mahadev who was working as Sub Inspector of Police earning Rs.2,650-30 ps per month, besides T.A. of Rs.300/- and other perks, on 06.06.1989 at about 2-30 a.m., was proceeding on his motorcycle bearing registration No.AAV 4442 near Narasingaraopet on National Highway road, a lorry bearing registration No.ADH 799, driven at high speed and in a rash and negligent manner, hit his motorcycle, due to which, he sustained injuries and died instantaneously. According to the petitioners, the lorry was owned by the 2nd respondent insured with the 3rd respondent and they sought Rs.5,00,000/- as compensation

quantifying it under various heads.

5. Before the Tribunal, the claim against the 1st respondent-driver of the lorry was dismissed on 09.03.1990 and the 2nd respondent-owner of the lorry filed a memo adopting the counter of the 3rd respondent-Insurance Company. The claim was totally opposed by the 3rd respondent-Insurance Company.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, on behalf of the petitioners, the 1st petitioner examined herself as P.W.1, besides examining Behara Seetharam as P.W.2, an eyewitness, and Ch.Venkatarao as P.W.3, the investigating officer, and marked Exs.A.1 to A.4. On behalf of the contesting 3rd respondent-Insurance Company, one M.A.Gafoor, Official from the local branch, was examined as R.W.1 and marked Exs.B.1 to B.5.

7. The Tribunal, on issue No.1, having assessed the evidence let in by the petitioners, the evidence of R.W.1 and the documentary evidence, tendered a positive finding about the involvement of the accident vehicle and held it in favour of the petitioners. On issue No.2, the Tribunal arrived the annual loss of dependency at Rs.12,000/- and applying the multiplier '12.50' and taking the age of the deceased as 40 years, arrived at Rs.1,50,000/-. Besides the same, the Tribunal granted Rs.15,000/- towards conventional amounts, i.e., Rs.7,500/- towards loss of expectancy of life and Rs.7,500/- towards pain and suffering, and Rs.3,000/- towards loss of consortium to the 1st petitioner and Rs.1,000/- towards funeral expenses. Thus, a total sum of Rs.1,69,000/- was granted by the Tribunal with interest at 12% per annum.

8. Aggrieved of the aforesaid order, the instant appeal is preferred contending in the grounds of appeal that despite the judgment passed by the Judicial Magistrate of First Class in C.C.No.322 of 1989 marked as Ex.A.5 through R.W.1 reflecting that the accused therein was acquitted on the ground that the lorry, which is shown as accident vehicle, was not involved, the Tribunal went wrong in awarding compensation. It is also stated in the grounds of appeal that the police seized some other vehicle and fastened the case against the appellant-Insurance Company by planting the present lorry as the accident vehicle, and, therefore, sought to set aside the order passed by the Tribunal.

9. Heard Smt. S.A.V.Ratnam, learned Standing Counsel for the appellant-Insurance Company. None represents the respondent Nos.1 to 4. Appeal against respondent Nos.5 and 6, who are driver and owner of the accident vehicle, was dismissed for default as per orders dated 03.01.2012. However, dismissal of the appeal for default against the 6th respondent-owner is of no consequence to decide the controversy herein.

10. Perused the order under challenge and the evidence on record, both, oral and documentary let in by the parties. It is true, through Ex.B.5 judgment, the concerned Judicial Magistrate of First Class acquitted the accused, but as observed by the Tribunal in recording the finding that the judgment in a criminal case has no binding effect in deciding the controversy on civil side cannot be faulted with. A perusal of the judgment under Ex.B.5 reflects that P.W.2 figured as an eyewitness therein, but turned hostile, and it also shows that the witnesses examined on behalf of the prosecution, except the official witnesses, completely turned hostile and nothing could be elicited by the concerned Assistant Public Prosecutor favouring their cross-

examination. It is, thus, very clear that the acquittal was based on the hostile testimony of the witnesses examined therein. It is no doubt true that P.W.2 supported the claim of the petitioners in the instant case, but turned hostile in the calendar case. But that cannot be a ground to reject the legitimate right of the petitioner for claiming compensation. Hence, the finding recorded by the Tribunal that Ex.B.5 would not come in the way in entitling the petitioners for compensation does not suffer from any legal infirmity, and, therefore, rejecting the contention of the learned counsel for the appellant-Insurance Company, the order and decree passed by the Tribunal are hereby confirmed.

11. In the result, the appeal is dismissed confirming the order and decree dated 08.04.1993 passed by the Tribunal in M.O.P.No.439 of 1989. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

04th February, 2015.

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