

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.1032 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the appellants challenging the judgment and award, dated 24.10.2008 passed in M.V.O.P.No.90 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (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 06.12.2006 at about 11.30 AM, Gunta Narayana and his family members boarded an auto bearing No.AP-1-U-8799 to attend marriage function at Mancherial. When the auto reached near Arunakkanagar, Srirampur the driver of the tipper bearing No.AP-16-TW-2751 had driven the same in a rash and negligent manner and dashed the auto. The accident occurred due to the rash and negligent driving of the driver of the tipper, against whom the SHO, Srirampur registered a case in crime No.145 of 2006 under Sections 304-A and 337 IPC. In the accident, Gunta Narayana (hereinafter referred to as 'the deceased') sustained injuries and died. By the time of accident, the deceased was aged about 45 years and used to earn Rs.5,000/- per month as Toddy tapper. The petitioners are dependants on the income of the deceased. The

1st respondent is the driver of the tipper bearing registration No.AP16-TW-2751, which belongs to the 2nd respondent. The tipper was insured with the 4th respondent with effect from 16.06.2006 to 15.06.2007. Therefore, the respondents are jointly and severally liable to pay compensation of Rs.5,00,000/- to the petitioners.

4. The petition against the 1st respondent was dismissed. The

2nd respondent remained ex-parte. The 3rd and 4th respondents filed common counter 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 driver of the auto. The petition is bad for non-joinder of the insured and insurer of the auto, who are necessary parties to this petition. The respondents are not liable to pay compensation unless the petitioners prove that driver of the tipper 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 the petition may be dismissed.

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

1. Whether the accident had occurred due to the rash and negligent driving of the vehicle bearing No.AP16-TW-2751 by its driver?
2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
3. To what relief?
4. Whether the accident had occurred on account of use of the auto bearing No.AP-1-U-8799?

6 . During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the 3rd and 4th respondents, no oral evidence was adduced but Ex.B1 policy was 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 tipper, which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.4,65,000/- with interest @ 8.5% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, respondent Nos.3 and 4 preferred the present appeal.

9. Heard Smt. SAV Ratnam, learned counsel for the appellants and Sri K. Venumadav, learned counsel for the claimants.

10. The learned counsel for the appellants/respondent Nos.3 and 4 submitted that the finding of the Tribunal that the accident occurred due to the negligence of the driver of the tipper is not sustainable either on fact or law. She further submitted that the Tribunal failed to consider that the accident is the result of head on collision, which clearly manifest that there was negligence on the part of the driver of the auto. She further submitted that 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 tipper and there was no negligence on the part of the driver of the auto. 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 there was any negligence on the part of the driver of the auto to cause the accident or not?

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

13. Point No.1:

In order to prove the manner of the accident, the first petitioner examined herself as PW.1 and got marked Ex.A.1 to A.5 and PW.2 is the driver of the auto. A perusal of the testimony of P.W.1 reveals that on the date of accident she was

travelling in the auto along with her husband. If the testimony of PWs.1 and 2 is taken into consideration, the accident occurred due to rash and negligent driving of the driver of the tipper. In the cross-examination of PWs.1 and 2, nothing is elicited in support of R.2 version. As per the recitals of Ex.A1-FIR and Ex.A5-charge sheet, the accident occurred due to rash and negligent driving of the driver of the tipper. As per the recitals of Ex.A2-inquest report and Ex.A3-PME report, the deceased died to the injuries sustained in the road accident. As per the recitals of Ex.A4-MVI report, there was no mechanical defect in the tipper. The oral testimony of PWs.1 and 2 is cogent and convincing, moreover, supported by the documentary evidence i.e., Exs.A1 to A5. Apart from PWs.1 and 2, the driver of the tipper is competent person to speak about the manner of the accident and negligence, if any, on the part of the driver of the auto. For the reasons best known, the driver of the tipper (R.1) remained ex parte. The 3rd and 4th respondents did not take any steps to examine the 1st respondent or any other eyewitness to the accident to prove the negligence, if any, on the part of the driver of the auto. A specific plea in the counter by itself would not amount to proving of the stand taken by respondent Nos.3 and 4. There is no evidence much less legally admissible evidence to establish that the accident occurred due to rash and negligent driving of the driver of the auto also. In the absence of evidence, it is not possible for the Tribunal to arrive at a conclusion that the driver of the auto was equally responsible to cause the accident. The oral testimony of PWs.1 and 2 is cogent and convincing, moreover inspire the confidence of the Court. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the tipper, which resulted in the death of the deceased. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal on issue No.1.

14. Point No.2

By the time of accident, the deceased was aged about 45 years. The Tribunal has applied the multiplier '10.45'. I am not inclined to disturb the finding of the Tribunal in view of non-filing of the appeal or cross-objections by the claimants. As per the testimony of PW.1, her husband is a toddy tapper, used to earn Rs.5,000/- per month

towards salary and Rs.50/- per day towards batta. As per Ex.A6-salary certificate issued by toddy tappers cooperative societies, Ramagundam, the deceased used to earn Rs.5,000/- per month towards salary and Rs.50/- per day towards batta. The fact remains that the deceased was a toddy tapper by profession. A toddy tapper is a skilled worker. The Tribunal taking into consideration the recitals of Ex.A6, arrived at a conclusion that the deceased used to earn Rs.5,000/- per month and Rs.60,000/- per annum. I am also agreeing with the finding recorded by the Tribunal that the deceased was used to earn Rs.5,000/- per month as toddy tapper. The Tribunal deducted 1/3rd towards personal expenses of the deceased, that the deceased may contribute Rs.40,000/- per annum to his family members. The Tribunal arrived at a conclusion that the loss of dependency comes to Rs.4,18,000/- and the Tribunal also awarded an amount of Rs.47,000/- towards non-pecuniary damages. The amount of compensation awarded by the Tribunal under various heads is just and reasonable and meet the ends of justice. There are no grounds much less valid grounds to interfere with the judgment passed by the Tribunal so far as quantum of compensation is concerned. In the light of foregoing discussions, I am unable to accept the contention of the learned counsel for the appellants that the amount of compensation is on higher side. The appeal lacks merit and bonafides. Hence, the appeal is liable to be dismissed.

15. 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: 01.04.2015

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