

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.2766 OF 2005

JUDGMENT:

The instant appeal is preferred by respondent No.2 – United India Insurance Company Limited in O.P.No.32 of 1999 on the file of Chairman, Motor Accidents Claims Tribunal (Additional District Judge), Anantapur, aggrieved by the order, dated 21.06.2005, awarding a sum of Rs.1,60,000/- as compensation, which amount was the claim made by respondent Nos.1 and 2 herein, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of their son in unmarried status at the age of 19 years.

2. The appellant is respondent No.2, whereas respondent Nos.1 and 2 are petitioners and respondent No.3 is respondent No.1 in the O.P. before the Tribunal.

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

4. Briefly stated, the facts are that one T. Ramamurthy, who is the son of petitioners aged about 19 years, was travelling along with his relatives in an Auto bearing Registration No.CKR 2235 owned by petitioner No.1 and while returning from Yerradoddi Village having performed poojas to diety Gangamma, when the Auto reached Railway Bridge on Kadiri to Anantapur road, a lorry bearing Registration No.AP-03-T-9459 driven at high speed in a rash and negligent manner coming in opposite direction dashed the Auto, due to which, the said T. Ramamurthy sustained fracture to his right ribs and immediately he was shifted to Government Hospital, Kadiri,

where first aid was given and then he was referred to Government Head Quarters Hospital, Anantapur, and thereafter, he was referred to

St. Johns Hospital, Bangalore and after treatment, he was brought back to Government Hospital, Kadiri, where he succumbed to injuries while undergoing treatment. The concerned Station House Officer has registered a case in Crime No.36 of 1997 in Kadiri Police Station and filed charge sheet, numbered as C.C.No.239 of 1997. Claiming that the deceased was earning Rs.4,000/- per month by doing Dhobi work and running the Auto, the petitioners sought a total sum of Rs.1,60,000/- as compensation.

5. Respondent No.2, insurer of the lorry, opposed the claim mainly on the ground that the death of the deceased cannot be attributed to the accident or as a result of the accident, as the death took place about three months after the date of accident and that has been the reason the police filed charge sheet levelling punishment under Section 338 I.P.C. and has not altered the section of law, and therefore, sought to dismiss the claim petition.

6. Respondent No.1 filed memo adopting the counter filed by respondent No.2.

7. Based on the said pleadings, in the direction of accounting for responsibility about the accident, Tribunal framed the following three issues:

“1. Whether the accident occurred on 1-5-97 due to rash and negligent driving of the Lorry bearing No.AP-03/T.5459 by its driver hit the Auto bearing No.CKR 2235 and caused the death of the deceased?

2. Whether the petitioners are entitled to compensation? If so, to what amount and from which respondent?

3. To what relief?”

8. During enquiry, petitioner No.1 examined himself as PW.1 besides examining an eye witness to the occurrence as PW.2 and also examined two Doctors as PWs.3 and 4 respectively and marked Exs.A1 to A15 apart from Exs.C1 and C2 marked through PWs.3 and 4 to substantiate the claim laid. On behalf of respondent No.2, Dr. C.R. Krishna Rao was examined as RW.2, whereas the Assistant Divisional Manager of respondent No.2 – Insurance Company was examined as RW.1 and marked Ex.B1 – Insurance Policy in an attempt to substantiate that the death of the deceased has not occurred on account of the accident.

9. The Tribunal, on appraisal of evidence let in by the petitioners, on issue No.1, held that due to rash and negligent driving of the driver of lorry the accident had occurred. On issue No.2, having dealt with elaborately the evidence of PWs.1 to 4 and RWs.1 and 2, more particularly, the evidence of RW.2, as he has given unequivocal admission stating that 'Meglo Blastic Anaemia' is not a hereditary disease, held that the cause of death of the deceased was on account of the accident in which he sustained injuries initially and treated in various hospitals as mentioned above and granted total compensation of Rs.1,60,000/- with interest at 9% per annum, taking monthly earnings of the deceased at Rs.3,000/- per month, deducting 1/3rd therefrom towards his personal expenses, and by applying multiplier 10.91 as confirmed by this Court in **Bhagwan Das v. Mohd. Arif**.

10. Aggrieved by the compensation awarded by the Tribunal, respondent No.2 preferred the instant appeal mainly contending in the grounds that the deceased sustained only one grievous injury and fracture of 3 to 4 ribs of one side in the accident that took place on 01.05.1997 and he died on 29.07.1997 due to 'Meglo Blastic Anaemia' and the same has no relation to the injuries sustained by

the deceased in the accident.

11. Heard Sri S. Daivabhimanam, learned counsel for the appellant, and Sri Maheswara Rao Kuncheam, learned counsel for respondent Nos.1 and 2. Despite service of notice on respondent No.3, none appears for him.

12. Learned counsel for the appellant would reiterate the above referred ground and submits that the Tribunal went wrong in holding that the proximate cause of death of the deceased was the accident and therefore, sought to set aside the impugned award and decree.

13. On the other hand, learned counsel for respondent – petitioners would submit that the evidence of RW.2 would make it abundantly clear that the death of the deceased was directly attributable to the injuries he sustained in the accident. Learned counsel has also referred to the observations made by the Tribunal in Paragraph No.10 of the award, relating to the admission made by RW.2 in his cross-examination to the effect that on account of the injuries sustained by the deceased in the accident the death has occurred and the disease 'Meglo Blastic Anaemia' is not a hereditary disease.

14. Taking place of the accident, deceased receiving injuries in the said accident, he being referred from hospital to hospital as mentioned above while narrating the facts, and taking place of his death at Government Hospital, Kadiri, are all not in dispute. Respondent No.2 – Insurance Company has examined the Doctor C.R. Krishna Rao, Senior CMO, SJMCH, Bangalore, on commission. A scanning of the answers given by him in his cross-examination would reflect that the deceased when admitted in the St. Johns Hospital was found suffering with breathlessness and multiple

injuries, which lead to the deceased developing anaemia. He has also admitted what was incorporated in the discharge summary, marked as Ex.A11, and made categorical admission that at the time of admission, the deceased had 'Meglo Blastic Anaemia' and it is not a hereditary disease and it came probably due to loss of blood and he has given two units of cells to the deceased without any reaction. Thus, this one admission is sufficient to cut at the root of the stand taken by the Insurance Company. Therefore, nothing else is required to probe further to hold that the Tribunal has not committed any error in holding that the death of the deceased was due to the injuries he sustained in the accident. Since the award of the Tribunal does not suffer from any illegality and it is well reasoned and well appreciated on the basis of evidence on record, it does not warrant any interference. Hence, the award and decree passed by the Tribunal so far as the determination of compensation is concerned are confirmed.

15. Further, the Tribunal has granted interest at the rate of 9% per annum on the amount awarded. Learned counsel for the Insurance Company submits that in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**, interest at the rate of 7.5% per annum is permissible. Therefore, the rate of interest granted by the Tribunal at 9% per annum on the amount awarded is reduced to 7.5% per annum.

16. Subject to the above modification, the appeal is allowed in part. There shall be no order as to costs.

17. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed.

A. SHANKAR NARAYANA, J

December 10, 2015.

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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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