

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

C.M.A.No.3664 of 2004

JUDGMENT:

1 Aggrieved by the judgment and award dated 23.06.2004 passed in O.P.No.59 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Chittoor at Madanapalle, wherein and whereby an amount of Rs.1,70,000/- was awarded towards compensation as against the claim of Rs.2.00 lakhs, the insurer preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

2 For the sake of convenience, the parties to this miscellaneous appeal, will, hereinafter, be referred to as they are arrayed before the Tribunal.

3 The facts that led to the filing of the present appeal, briefly, are as follows:

4 On 14.12.1999 one C.Chinnappa was proceeding to Mulakalacheruvu from Madanapalle as a pillion rider on the motor cycle bearing No.AAD 2040 and when the motorcycle reached near Ganginayanicheruvu, the driver of the lorry bearing No.ATA 2254 i.e. third respondent herein, drove the same in a rash and negligent manner and dashed against the motorcycle on which Chinnappa was proceeding. As a result, Chennappa fell down from the motorcycle and sustained injuries. Chinnappa (hereinafter referred to as 'the deceased') died while being shifted to hospital. By the date of accident, the deceased was aged about 23 years and used to earn Rs.50,000/- per annum on agriculture. First petitioner is maternal aunt and petitioner No.2 is own brother of the deceased and they are dependents on the income of the deceased. First respondent is owner, second respondent is the insurer of the lorry bearing No.ATA 2254 and the third respondent is the driver of the said lorry. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners. Hence the petition.

5 Third respondent remained *ex parte*. First respondent filed counter denying the averments made in the petition including the manner of accident, age and income of the deceased inter *alia* contending that the accident occurred due to the rash and negligent driving of the rider of the motorcycle and that there was

no negligence on the part of the driver of the lorry. The offending lorry was insured with the second respondent as on the date of accident and hence, the second respondent alone is liable to pay compensation, if any, to the petitioners. Hence the petition may be dismissed as against this respondent.

6 Second respondent filed counter denying all the material averments made in the petition including the manner of accident, age and income of the deceased inter alia contending that the accident occurred due to the rash and negligent driving of the rider of the motorcycle and that there was no negligence on the part of the driver of the lorry. The petitioners are not entitled to claim compensation unless they prove that the driver of the lorry was having valid and effective driving licence as on the date of accident. The petitioners are neither legal representatives of the deceased nor dependents on the income of the deceased, hence, the petition may be dismissed.

7 Basing on the above pleadings, the Tribunal framed the following issues for trial.

- a. Whether the accident occurred due to the rash and negligent driving of the offending vehicle lorry bearing Reg. No.ATA 2254 and Yezdi motorcycle bearing No.AAD 2040 involved in the accident and whether it resulted in death of the deceased,
- b. Whether the petition is bad for non-joinder of necessary parties?
- c. Whether the petitioners are entitled for compensation and if so payable by whom and to what extent,
- d. To what relief?

8 During the course of trial, 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, no oral or documentary evidence was adduced.

9 On appreciating the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATA 2254, which resulted in the death of the deceased and allowed the petition in part by awarding an amount of Rs.1,70,000/- as compensation, directing the respondent Nos.1 to 3 to pay the compensation to the petitioners jointly and severally. As stated supra, the second respondent/insurer of the offending lorry, aggrieved by the judgment and award of the Tribunal, preferred the

present appeal.

10 The contention of the learned counsel for the second respondent is two fold.

1) The petitioners are not dependents or legal representatives of the deceased, therefore, they are not entitled to claim compensation under Section 166 of the M.V. Act, and 2) The Tribunal allowed the petition without giving a specific finding that the petitioners are dependents on the income of the deceased.

11 *Per contra*, the learned counsel for the petitioners submitted that the petitioners have brought up the deceased and hence they are dependents on the income of the deceased. He further submitted that the second respondent has not taken a specific plea in the counter that the petitioners are not legal representatives of the deceased nor they are dependents on the income of the deceased. Hence the appeal is liable to be dismissed.

12 Basing on the above rival contentions, the points that emerge for determination in this appeal are:

- 1 . Whether the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATA 2254, which resulted in the death of the deceased?
2. Whether the Tribunal is justified in awarding compensation of Rs.1,70,000/- in favour of the petitioners?

Point No.1:

13 The second petitioner examined himself as P.W.1 and got marked Exs.A.1 to A.5. P.W.2 is an eyewitness to the accident. If the testimony of P.W.1 is taken into consideration, his brother died in a motor vehicle accident on 14.12.1999. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATA 2254. The testimony of P.Ws.1 and 2 clearly reveals that the deceased died due to the injuries sustained by him in the accident that occurred on 14.12.1999. As per the recitals of Ex.A.1-FIR and Ex.A.4 charge sheet, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATA 2254. As per the recitals of Ex.A.5, there is no mechanical defect in the lorry. As per the recitals of Ex.A.2 inquest panchanama and Ex.A.3 Post Mortem Examination report, the deceased died due to the injuries sustained by him in the accident. In the cross-examination of P.Ws.1 and 2, nothing is elicited to

shake their testimony so far as the manner of accident and factum of death of the deceased is concerned. The testimony of P.Ws.1 and 2 coupled with the recitals of Ex.A.1 to A.5 amply proves the manner of accident and the factum of death of the deceased in the accident. The Tribunal has assigned cogent and valid reasons to its findings on this issue. There are no grounds much less valid grounds to interfere with the findings of the Tribunal on this issue. Having regard to the facts and circumstances of the case I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATA 2254, which resulted in the death of the deceased. The point is answered accordingly.

Point No.2:

14 As seen from the testimony of P.W.1, he is the own brother of the deceased and that the first petitioner is the maternal aunt of the deceased. As per the evidence of P.W.1, himself and the first petitioner have brought up the deceased. Except the self serving testimony of P.W.1, there is no other evidence available on record to establish that the petitioners have brought up the deceased. But the fact remains is that the first petitioner is the maternal aunt and the second petitioner is the own brother of the deceased. There is no whisper in the testimony of P.W.1 that himself and the first petitioner are dependents on the income of the deceased. I have carefully perused the judgment of the Tribunal. As rightly pointed out by the learned counsel for the second respondent, the Tribunal has not given a specific finding that the petitioners are dependents on the income of the deceased. The deceased is younger when compared to P.W.1. Absolutely there is no material on record to establish that the petitioners are dependents on the income of the deceased. In such circumstances, the Tribunal ought not to have awarded compensation in favour of the petitioners without giving a specific finding that the petitioners are dependents on the income of the deceased.

15 The learned counsel for the petitioners submitted that even though the petitioners are not dependents on the income of the deceased, still, they are entitled to claim compensation under Section 140 of the M.V. Act. To substantiate the argument, the learned counsel for the petitioners have drawn my attention to the ratio laid down in ***New India Assurance Co. Ltd, Warangal V. Samala Agaiah and Another*** wherein this Court held at para No.10 as follows:

“.....As a legal representative of the deceased, compensation can be awarded to him only towards loss to the estate. In the judgment of the Supreme Court above referred, though it was held that the quantum of compensation to be granted towards loss to the estate to the legal representative of the deceased, who is not a dependant, shall be not less than the liability flowing from Section [140](#) of the Act, ultimately to the married daughter, who was not dependant on the deceased, the Supreme Court allowed to receive compensation under 'no fault liability' in terms of Section [140](#) of the Act. In the instant case, the evidence on record discloses that the wife of the deceased was separated from him and she died subsequently. Except the claimant, who is the younger brother of the deceased, there are no other legal representatives, who are entitled to succeed to the estate of the deceased. The claimant, therefore, is entitled to compensation but the said compensation would be towards loss to the estate and not towards loss of dependency. He, being the younger brother of the deceased not dependant on him, is entitled to receive the compensation under 'no fault liability' in terms of Section [140](#) of the Act and nothing more.”

16 Having regard to the facts and circumstances of the case and the principle enunciated in the case cited supra, I am of the considered view that the petitioners are not entitled to claim compensation under Section 166 of the M.V. Act without establishing that they are dependents on the income of the deceased. However, as per the principle enunciated in the case cited supra, the petitioners are entitled to claim compensation under section 140 of the M.V. Act. Having regard to the facts and circumstances of the case and also in view of the principle enunciated in the case cited supra, I am of the considered view that the petitioners are entitled to claim compensation of Rs.50,000/- under section 140 of the M.V. Act but nothing more.

17 A perusal of the record reveals that this court granted interim stay on 30.09.2004 on a condition that the appellant / 2nd respondent shall deposit 50% of the amount of compensation awarded by the Tribunal together with proportionate costs and interest. On 30.03.2005, this Court permitted the claimants 1 and 2 / respondent Nos.1 and 2 to withdraw the deposited amount without furnishing any security. The fact remains that the petitioners have withdrawn half of the awarded amount i.e. nearly Rs.85,000/-. In fact, the petitioners are entitled to Rs.50,000/- only. Having regard to the facts and circumstances of the case, I am of the considered view that the second respondent may be directed not to recover the excess amount which was withdrawn by the petitioners.

18 In the result, the appeal is allowed by granting compensation of Rs.50,000/- to the petitioners with interest @ 9% p.a. from the date of petition till the date of deposit. However, the second respondent – insurance company is not entitled

to recover the amount already withdrawn by the petitioners over and above Rs.50,000/-. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 12th October, 2015

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