

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1162 of 2009

JUDGMENT:

This appeal is filed under Section 173 of Motor Vehicles Act by the claimants challenging the judgment and award dated 09.2.2005 passed in O.P.No.878 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nellore.

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

3. The facts leading to filing of the present appeal are, briefly, as follows: On 30.9.2003, Kotamreddy Naresh Reddy along with his friend, Gudi Suresh Kumar, was proceeding on a cycle in Nellore. When they reached near N.T.R. Bhavan, on Mini bypass road, at about 4.00 P.M., the driver of lorry bearing R.C. No.TN 23Z 5400 had driven the same in a rash and negligent manner and hit the cycle on which Naresh Reddy was proceeding. The accident occurred due to rash and negligent driving of the driver of the lorry against whom the Station House Officer, South Traffic Police Station, Nellore registered a case in Crime No.123 of 2003 under Section 304A IPC. In the accident, Naresh Reddy (hereinafter referred to as the deceased) sustained grievous head injury and died on the spot. By the time of the accident, the deceased was aged about 18 years and used to earn Rs.2,500/- per month towards salary and Rs.20/- per day towards batta. The petitioners, who are parents, are dependants on the income of the deceased. The lorry, which belongs to the first respondent, was insured with the second respondent as on the date of the accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioners with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the material averments made in the petition, *inter alia*, contending that the accident occurred due to rash and negligent act of the deceased only and there was no negligence on the part of the driver of the lorry. This respondent is not liable to pay compensation unless the petitioners establish that the driver of the lorry was having valid and effective driving

licence as on the date of the accident. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence the petition may be dismissed so far as this respondent is concerned.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred out of the use of the Motor Vehicle of respondent No.1?
- ii. Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondents?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the second respondent, no oral evidence was let in, but the copy of the insurance policy was marked as Ex.B.1.

8. On appraising the oral and documentary evidence 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 which resulted in death of the deceased, and allowed the petition in part by awarding compensation of Rs.1,54,500/-directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 9% p.a from the date of filing of the petition till the date of deposit. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimants preferred the present appeal.

9. Heard Sri M.S.R. Chandra Murthy, learned counsel for the claimants and Sri G.Purushotham Rao, learned standing counsel for the Insurance Company.

10. The contention of the learned counsel for the claimant is two fold:

i. The Tribunal has not rightly considered the oral testimony of P.W.3 and Ex.A6 salary certificate; and

ii. The amount of compensation awarded by the Tribunal is on lower side.

11. *Per contra*, the learned standing counsel for the insurance company submitted that the Tribunal rightly considered the material available on record and awarded just and reasonable compensation. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

12. Basing on the rival contentions, the only point that falls for determination in this appeal is:

Whether amount of compensation awarded by the Tribunal is just and reasonable or not?

Point:

13. There is no dispute with regard to the manner of the accident and the factum of death of the deceased. I am fully agreeing with the finding of the Tribunal, on issue No.1, that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in death of the deceased.

14. By the time of the accident, the deceased was bachelor. In case of death of bachelor, the Tribunal has to take into consideration the age of his mother or father, whichever is less, for taking appropriate multiplier. By the time of the accident, the age of the mother and father was 35 years and 40 years respectively. Therefore, the age of mother has to be taken into consideration. As per the decision in **Sarla Verma v DTC**, proper multiplier applicable for the age group of 31 – 35 years is '16'. As per the testimony of P.W.3, by the time of the accident, the deceased was working as Supervisor and drawing a salary of Rs.2,500/- per month and Rs.20/- per day towards batta. As per the testimony of P.Ws.1 and 3, the deceased used to earn Rs.3,100/- per month. The Tribunal discarded the testimony of P.W.3 and Ex.A6 salary certificate. Even by attending coolie work, the deceased may earn Rs.3,000/- per month. By the time of the accident, the deceased was a bachelor; therefore, the Tribunal or court has to deduct 50% of the income towards his personal expenses. The deceased may contribute (Rs.3,000 – 1,500) Rs.1,500/- per month to his parents. Loss of dependency comes to (Rs.1,500 X 12 X 16) Rs.2,88,000/-. The Tribunal awarded Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. Taking into consideration the age of the deceased, I am inclined to award an amount of Rs.5,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The total compensation comes to (Rs.2,88,000 + Rs.5,000 + Rs.15,000) Rs.3,08,000/-. However, the petitioners are entitled to Rs.3,00,000/- only as claimed in the petition. The petitioner Nos.1 and 2 are entitled to the compensation equally.

15. Absolutely there is no material on record to establish that the first respondent – owner of the vehicle had violated the terms and condition of Ex.B1 policy. The policy

was in force as on the date of the accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Accordingly, the point is answered.

16. In the result, the appeal is allowed enhancing the compensation from Rs.1,54,500/- to Rs.3,00,000/- as claimed. The petitioners are entitled to costs and interest at 9% per annum on Rs.1,54,500/- and at 7.5% per annum on the enhanced amount of Rs.1,45,500/- from the date of petition till the date of deposit. The respondent Nos.1 and 2 are hereby directed to jointly and severally deposit the same within a period of two months from the date of receipt of a copy of this order. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 28th April, 2015.

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