

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A.No.877 of 2010

JUDGMENT:

Challenging the compensation awarded in M.V.O.P.No.534 of 2004 dated 19.02.2010 by the Chairman, M.A.C.T-cum-District Judge, Adilabad (for short “the Tribunal”), the second respondent—National Insurance Company Limited, Adilabad preferred the instant appeal.

2) The factual matrix of the case is thus:

a) Claimants are respectively the widow, daughter and mother of the deceased—Indur Devanna. The case of the claimants is that on 20.06.2003 at about 4:00PM, when the deceased was proceeding as pillion rider on Hero Honda (Splendor) motorcycle bearing registration No.AP 1 D 8863 being driven by respondent No.3, on NH7 in Adilabad town and when they reached in front of Ram Bar and Restaurant, suddenly the motorcycle dashed against an auto bearing No.AP 1T 6065, due to which the deceased fell down on the road and received severe head injury and other injuries all over the body. Immediately he was admitted in Government Hospital, Adilabad. Thereafter, he was shifted to Nagpur Medical College and Hospital where he succumbed to injuries on 22.06.2003. It is averred that auto driver was responsible for the accident. On these averments the claimants filed

M.V.O.P.No.534 of 2004 under Section 166 and 163A of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are the owner and insurer of the auto; R3 to R5—driver, owner and insurer of the motor cycle respectively and claimed Rs.8,00,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1—owner-cum-driver of the auto filed counter stating that the accident was occurred not due to his fault or negligence but the driver of motorcycle. He further stated that police did not register any case against him and as the auto was insured with R2—Insurance Company, it has to indemnify the liability of R1 if any. He further contended that claim is highly excessive and exorbitant and thus prayed for dismissal of OP.

c) Respondent No.2—Insurer of auto filed counter and opposed the petition contending that accident was occurred due to the rash and negligence of driver of motorcycle i.e. R3 and there is no valid driving licence for both the drivers of auto and motorcycle at the time of accident. R2 further contended that compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

d) Respondent No.3—driver of motorcycle filed counter stating that there is no negligence on his part and driver of auto alone is responsible for the accident. He further stated that as the motorcycle was insured with R5—Insurance

Company and the policy was in force, Insurance Company is liable to pay compensation.

e) Respondent No.4—owner of the motorcycle and Respondent No.5—insurer of motorcycle filed separate counters denying all the material allegations made in the petition and urged to put the claimants in strict proof of the same. R.4 and R.5 disowned their liability on the main contention that the motorcycle bearing No.AP 1 D 8863 was not at all involved in the accident. Thus they prayed to dismiss the OP.

f) During trial, PWs.1 to 4 were examined and Exs.A1 to A11 were marked on behalf of claimants. RWs.1 and 2 were examined and Exs.B1 and B2 were marked on behalf of respondents. CW1 was examined and Ex.C1 was marked.

g) On appreciation of both oral and documentary evidence the Tribunal awarded total compensation of Rs.6,67,800/- with costs and interest at 6% p.a. against respondent Nos.1 and 2 and dismissed the case against respondent Nos.3 to 5.

Hence, the appeal by National Insurance Company Limited.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri K.Sitaram, learned counsel for

appellant/ Insurance Company; Sri S.Surender Reddy, learned counsel for respondents 1 to 3/claimants and Sri C.V.Rajeeva Reddy for R7—Insurance Company. Notice sent to R4/owner of auto and R5—driver of motorcycle was unserved. Though notice sent to R6/owner of motorcycle was served but there is no representation on his behalf, hence treated as heard.

5 a) Opposing the award, learned counsel for appellant/Insurance Company firstly contended that in this case the entire fault lies with the rider of the motorcycle who went behind the auto and dashed it and thereby the pillion rider fell down, suffered injuries and died. The RW.1 who is the owner-cum-driver of the auto gave Ex.P.1—report to police immediately after the accident narrating all these facts and police too registered the case against the rider of the Hero Honda Splendor motorcycle bearing No.AP 1 D 4334 and ultimately laid Ex.A.4—charge sheet against the said rider of motorcycle. However, during the course of investigation, the Investigating Officer came to opinion that the motorcycle bearing No.AP 1 D 8863 was involved in the accident but not motorcycle bearing No.AP 1 D 4334 and accordingly laid charge sheet against the rider of the said vehicle. In spite of this documentary evidence and the oral evidence of RW.1—the driver of auto, the Tribunal erred in holding that the auto driver was responsible for the accident. Learned counsel argued that while giving such finding, the Tribunal placed

reliance on the evidence of PW.4, who was one of the passengers in the auto and an eye witness to the accident. Though the accident was occurred due to the fault of the rider of the motorcycle (R.3 in the O.P), still PW.4 gave a false evidence as if the auto driver was responsible for the accident as he was won over by the claimants. Learned counsel thus argued that the Tribunal erred in giving preference to PW.4 inspite of overwhelming oral and documentary evidence such as RW.1 and Exs.A.1 and A.4 which demonstratively showed the fault of rider of motorcycle.

i) Learned counsel alternatively argued that since two vehicles are involved in the accident and motorcycle went behind the auto and dashed it, atleast contributory negligence may be fixed on the rider of the motorcycle.

b) Secondly, learned counsel argued that the compensation awarded under different heads is highly excessive and exorbitant and same needs to be revised.

6 a) Per contra, learned counsel for respondent Nos.1 to 3/claimants supported the award and argued that PW.4 is an independent witness as he was a traveler in the auto and therefore, there was no need for him to speak falsehood against the auto driver or in favour of the rider of the motorcycle. On the other hand, RW.1 (R.3 in the O.P) is an interested witness inasmuch as he was the owner-cum-driver of the auto and therefore, the Tribunal rightly believed the

evidence of PW.4 in preference to RW.1. He thus strongly argued that fault lies with RW.1 and the Tribunal rightly held so.

b) Next, he argued that compensation awarded under different heads was just and reasonable and there is no need to revise the same.

7) Learned counsel for respondent No.7/Insurance Company of motorcycle bearing No.AP 1 D 8863 also argued in the same lines.

8) In the light of above rival arguments, the point for determination in this appeal is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

9) **POINT:** As per the case of claimants, on 20.06.2003 at about 4:00pm, when the deceased—Devanna along with R.3 was proceeding on Hero Honda (Splendor) Motorcycle bearing No.AP 1 D 8863 being driven by R.3 in Adilabad and when the said motorcycle reached in front of Ram Bar and Restaurant, the motorcycle dashed behind the auto bearing No.AP 1 T 6065 as RW.1—the auto driver suddenly applied brakes and turned his vehicle to the right side. Basing on the oral and documentary evidence, the Tribunal held that RW.1 being the driver of auto was responsible for the accident. In

the above context, there is any amount of controversy with regard to the involvement of Hero Honda (Splendor) Motorcycle bearing No.AP 1 D 8863. The controversy is because immediately after the accident, R.1 lodged Ex.A.1—FIR wherein he referred the number of the motorcycle as AP 1 D 4334. However, Ex.A.4—charge sheet would show that the Investigating Officer mentioned the motorcycle Number as AP 1 D 8863. He mentioned that as per R.T Authorities, the Hero Honda (Splendor) Motorcycle bearing No.AP 1 D 4334 was reserved and not allotted to anybody. Sofaras Motorcycle bearing No.AP 1 D 8863 is concerned, admittedly it belongs to A.Naganatham (R.4 in the O.P), who is a Police Constable. He was examined as RW.2. His version is that he is working as P.C in Adilabad II Town P.S and he purchased the Hero Honda (Splendor) Motorcycle bearing No.AP 1 D 8863 in the year 2002 and he never gave the motorcycle to R.3 as he does not know him. His further evidence was that on 20.06.2003 i.e, on the date of accident, he was on guard duty at Bela Police Station and his motorcycle was also along with him and on 14.12.2003 he sold the above motorcycle to one Saleem Khan under Ex.B.1—sale deed. His further version is that, the submission of R.3 that this witness gave vehicle to him on 20.06.2003 and he went on it and the said vehicle was involved in the accident is not correct. RW.2 further stated in his evidence that after receiving summons from the Tribunal, he submitted a complaint to Superintendent of Police, Adilabad for faulty investigation and the S.P appointed D.S.P

to enquire into the matter and he recorded his statement. He produced Ex.B.2—copy of the complaint. Be that it may, in this matter Assistant Superintendent of Police, Adilabad was examined as CW.1, who deposed that the complaint given by RW.2, was forwarded by S.P, Adilabad to the-then Sub-Divisional Police Officer (S.D.P.O) to conduct enquiry and the said S.D.P.O conducted enquiry and submitted his report under Ex.C.1. He stated that substance of the report was that, the-then Sub-Inspector B.Satyanarayana of Adilabad Traffic P.S and the Inspector RVS Prasad of Adilabad Traffic P.S have wrongly shown the motorcycle number as AP 1 D 8863 as the offending vehicle in the crime, though it was not involved in the accident. Thus from the above overwhelming evidence, it is clear that the motorcycle bearing No.AP 1 D 8863 was not involved in the accident.

a) Then the motorcycle bearing No.AP 1 D 4334 is concerned, speaking about it, PW.2—Senior Assistant in R.T.O office, Adilabad deposed that as per Ex.A.9—computer extract of allotment register, the registration No.AP 1 D 4334 was not allotted to any vehicle but it was reserved by a person namely Om Prakash on 16.08.2000 and ever since that date, it was not allotted to anybody and it is lying blank in the records and no vehicle is registered with the said number either by Om Prakash or anybody else till the date of his giving the evidence. Then the Tribunal in Para 19 of its award appears to have held that the vehicle bearing No.AP 1 D 4334

was involved in the accident but not AP 1 D 8863 and accordingly, exonerated respondent Nos.3 to 5 in the O.P and fixed liability on the owner and insurer of the auto on the finding that the auto driver was responsible for the accident. The Tribunal came to this finding basing on the evidence of PW.4—the eye witness-cum-traveler in auto.

10) Having regard to the overwhelming oral and documentary evidence, there can be no two opinions that the motorcycle bearing No.AP 1 D 8863 was not involved in the accident and it was mischievously implanted. Either the motorcycle bearing No.AP 1 D 4334 as mentioned in FIR or some other numbered motorcycle must have been involved in the accident. There is no demur that apart from the auto of RW.1, one motorcycle was involved in the accident because RW.1 himself admitted that one motorcycle hit his auto. Now the fault is concerned, we have the divergent evidence of PW.4 on one hand and RW.1 on the other. PW.4—Allam Suresh, who is an eye witness-cum-traveler in the auto, deposed that at the time of accident himself and others were going in the auto of RW.1 from Adilabad bus stand towards Tamsi Bus Stand, Nagpur—Hyderabad Highway and on the way, when their auto reached near a wine shop about 1 or 2 furlongs from the Bus Stand of Adilabad, the auto driver, all of a sudden swerved the auto to his right side and at that point of time a Hero Honda Motorcycle came and hit the auto and auto stopped after travelling a little distance after the accident. He

stated that at the time of accident, RW1 was driving the auto at high speed and he was at fault as he turned the auto to his right without giving any signal as a precautionary measure. Whereas RW.1 in his evidence stated as if he was not at fault and the accident was occurred due to the rash and negligence of the motorcycle. As rightly argued by learned counsel for respondents/claimants, PW.4 who is admittedly an eye witness in the accident and he is an independent witness without any interest in either party. He clearly deposed that RW.1 drove his vehicle at high speed and he suddenly swerved his vehicle to his right side without giving any precautions. From his evidence, it is clear that RW.1 was responsible for the accident. Since he is an independent witness, his evidence can be accepted in preference to RW.1. Therefore, the Tribunal rightly held that RW.1 and R.2 are responsible to pay compensation.

11) So far as the quantum of compensation is concerned, the evidence of PW.3 coupled with Ex.A.7—salary certificate issued by the Executive Officer (Accounts), District S.C Service Cooperative Society Ltd, Adilabad shows that the deceased was working as Attender in the said society and drawing gross monthly salary of Rs.5,170/-. Accepting the said salary and his age as 30 years, the Tribunal rightly fixed the loss of dependency at Rs.6,52,800/- and added a sum of Rs.15,000/- towards loss of consortium and awarded total compensation of Rs.6,67,800/-. I find no exorbitance in it.

12) So at the outset, I find no illegality or irregularity in the award passed by the Tribunal and accordingly, there are no merits in the appeal.

13) In the result, this M.A.C.M.A. is dismissed by confirming the award passed by the Tribunal in M.V.O.P.No.534 of 2004. No costs in the appeal.

As a sequel, miscellaneous petitions pending if any shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.06.2015

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