

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.91 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 08.12.2011 passed in M.V.O.P.No.536 of 2006 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Family Court, S.P.S.R. Nellore District, wherein and whereby the Tribunal allowed the petition in part by awarding compensation of Rs.9,54,500/- as against the claim of Rs.10,00,000/-.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the appeal are briefly as follows: On 28.9.2005, in the morning hours, Gampala Veeranjanyulu was proceeding on his motor cycle bearing No.AP 26M 178 from Sullurpet to Nellore. When he reached near C.K.M. Petrol Bunk at Naidupet, the driver of Trolley bearing No.AP 27V 6688 stopped the same all of a sudden, in a rash and negligent manner, thereby the motor cycle dashed against the Trolley. The accident occurred due to the rash and negligent driving of the driver of the Trolley against whom the Station House Officer, Naidupet Police Station registered a case in Crime No.147 of 2005 for the offences punishable under Sections 283 and 304A IPC. Due to the accident, Gampala Veeranjanyulu (hereinafter referred to as, the deceased) sustained grievous injuries on various parts of the body and while undergoing treatment in Government General Hospital, Chennai, he died on 31.10.2005. By the time of the accident, the deceased was aged about 38 years and used to earn Rs.7,081/- per month as a Government servant. The first petitioner is the wife, petitioner Nos.2 and 3 are the children, and fourth petitioner is the mother of the deceased. The Trolley bearing No.AP 27V 6688,

which belongs to the first respondent, was insured with the second respondent at the relevant point of time. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. Hence, the petition.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition including the manner of the accident, age and income of the deceased. The accident occurred due to the rash and negligent driving of the driver of the Trolley. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. The driver of the Trolley was not having valid and effective driving licence as on the date of the accident; therefore, this respondent is not liable to pay compensation to the petitioners. Hence, the petition may be dismissed.

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

1. Whether the driver of the crime vehicle bearing No.AP 27V 6688 suddenly stopped his vehicle in a rash and negligent manner without following the traffic rules in the middle of Road, which resulted deceased/Gampala Veeranjanyulu dashed back portion of the trolley and succumbed to the injuries or whether the deceased/ Gampala Veeranjanyulu himself drove his motor cycle bearing No.AP 26M 178 with high speed in a rash and negligent manner and lost control over it and himself dashed the stationed trolley/trailer and received injuries and subsequently died?

2. Whether the claim petition is bad for non joinder of insurance company of the motor cycle bearing No.AP 26M 178?

3. Whether the claimants are entitled for compensation and to what amount and from whom?

4. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3

were examined and Exs.A1 to A11 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 to B3 were marked.

7. Basing on 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 crime vehicle, which resulted in the death of the deceased and allowed the petition in part by awarding a compensation of Rs.9,54,500/- with interest at 7.5% per annum from the date of the petition till realization. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent—Insurance company preferred the present appeal.

8. The learned counsel for the appellant—second respondent submitted that the Tribunal failed to consider the recitals of Ex.A1 (F.I.R.) and Ex.B2 (certified copy of deposition of P.W.1 in C.C. No.294 of 2006 on the file of Judicial Magistrate of First Class, Sullurpet). He further submitted that driver of the trolley was acquitted in C.C. No.294 of 2006; therefore, the Tribunal ought to have held that the accident occurred due to the negligence of the deceased. ***Per contra***, learned counsel for the petitioners-claimants submitted that the Tribunal considered the oral and documentary evidence, in right perspective, and arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the Trolley. She further submitted that there are no grounds to interfere with the well considered judgment and award of the Tribunal.

9. Now, the point that arises for consideration in this appeal is:

Whether there was any negligence on the part of the deceased to cause the accident?

Point:

10. To prove the manner of the accident, the first petitioner examined

herself as P.W.1 and got marked Exs.A1 to A5. P.Ws.2 and 3 are the eye witnesses to the accident. To demolish the case of the petitioners, R.W.1 was examined. Admittedly, P.W.1 and R.W.1 are not eye witnesses to the accident; therefore, their testimony is no way helpful to determine the manner of the accident. P.W.2, for one reason or the other, did not appear before the Tribunal to face the cross-examination; therefore, his evidence was eschewed. In the cross-examination, P.W.3, in unequivocal terms, deposed that two four-wheelers can easily pass-on, at a time, at the place of the accident. He denied the suggestion that the crime vehicle was stopped on the road side. If the testimony of P.W.3 is taken into consideration, there was some negligence on the part of the deceased to cause the accident. At the relevant point of time, P.W.3 was working in the petrol bunk near the place of accident. A perusal of Ex.A8 (certified copy of deposition of P.W.1 in C.C. No.294 of 2006) clearly reveals that P.W.2 was examined as P.W.1 in the criminal case registered against the driver of the Trolley. For one reason or the other, he did not support of the case of prosecution that the accident occurred due to the rash and negligent driving of the driver of the Trolley. This clearly indicates that P.W.2 did not support the case of the prosecution for the reasons best known to him.

11. It is an admitted fact that the accident occurred on four-way road near Naidupet at about 6.30 a.m. in the month of September, 2005. Nowhere, it is mentioned that at the time of accident, there was drizzle or rain and due to which the deceased might not have seen the Trolley stationed on the road margin. Even as per the testimony of P.W.3, two four-wheelers can ply easily, at a time, at the place of the accident. The fact remains that the Trolley was stationed near a Tea bunk. There is no whisper in the testimony of P.W.3 that the Trolley was stopped on the road in such a manner blocking the road. As per the recitals of Ex.A1 (F.I.R), the deceased dashed against the stationed

Trolley, which falsifies the averment made in the petition that the accident occurred due to rash and negligent driving of the driver of the Trolley only. While deciding this type of cases, the court has to take into consideration the ground realities. A perusal of Ex.A1 (F.I.R.) clearly reveals that there is possibility for the deceased to identify the vehicle much prior to reaching the accident spot. If the deceased has taken reasonable care, there is every possibility of averting the accident. The oral and documentary evidence available on record clinchingly establishes that there was some negligence on the part of the deceased also. At the same time, it is the duty of the drivers of four-wheelers and heavy vehicles like Trolleys to park the vehicles in the specified places or at some distance to the main road in order to avoid accidents. If the driver of the Trolley has taken a reasonable care and parked the Trolley away from the road, the accident might not have occurred. Basing the material available on record, this court can safely arrive at a conclusion that there was some negligence on the part of the driver of the Trolley to cause the accident. Taking into consideration the facts and circumstances of the case, I am inclined to apportion the negligence on the part of the driver of the Trolley and the rider of the motor cycle (deceased) at the ratio of 80% and 20%.

12. Having regard to the facts and circumstances of the case, I am of the considered view that there was negligence on the part of the deceased in causing the accident to the extent of 20%; therefore, the petitioners have to forego 20% of compensation awarded by the Tribunal. Accordingly, the point is answered.

13. By the time of the accident, the deceased was a Government employee. Basing on Ex.A6 (salary certificate), the Tribunal decided the loss of dependency. Moreover, the second respondent is also not disputing the quantum of compensation awarded by the Tribunal. A perusal of the record reveals that the Tribunal awarded total

compensation of Rs.9,54,500/-, which is just and reasonable. Out of the same, the petitioners have to forego 20%, and after deducting the same, the petitioners are entitled to the compensation of (Rs.9,54,500 – Rs.1,90,900=) Rs.7,63,600/-.

14. In the result, the appeal is partly allowed, reducing the compensation from Rs.9,54,500/- to Rs.7,63,600/-. The respondent Nos.1 and 2 shall jointly and severally pay Rs.7,63,600/- (Rupees seven lakhs sixty three thousand and six hundred only) to the petitioners with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 25.08.2015.

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