

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.472 of 2009

JUDGMENT:

Against the Tribunal awarding compensation to the LR's of the deceased for his death being caused on account of his scooter dashing against stationed lorry on the night of 06.05.2005, the Insurance Company preferred the instant appeal.

2) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

3) Heard arguments of Sri Jonna Ramani, learned counsel for appellant/Insurance Company and Sri Nageswar Rao, learned counsel for respondents 1 to 3 and 5/claimants. R.4 died vide Cause Title. Though notice to R.6 was served but there is no representation on his behalf.

4) The prime argument of learned counsel for appellant is that the deceased was solely responsible for the accident inasmuch as he drove the scooter without headlight in the night time in a rash and negligent manner and dashed against a parked lorry and inspite of RW1 the driver of the lorry, who stood behind the lorry and witnessed the accident and deposed the said fact, the Tribunal on an erroneous appreciation of the facts and evidence held as if the driver of the lorry was responsible for the accident as he parked the vehicle on the middle of the road without putting on the parking lights and placing parking stones around the vehicle. He would argue that even assuming that the lorry driver was at fault in parking the

vehicle on the middle of the road without putting on the indicator lamps and placing parking stones or other objects around the vehicle as alleged, still it would only amount to violation of the traffic rules and in that event, the 1st respondent in the OP, who is the owner of the vehicle and the driver alone will be liable to answer the claim but not the Insurance Company. The Tribunal erred in fastening liability on Insurance Company on that count also.

a) Learned counsel would further argue that even if RW.1 is held to have left the vehicle on the middle of the road without putting on the parking lights etc, still the deceased cannot escape his responsibility of watchfully driving his scooter by observing the vehicles on the road and on the other hand, the evidence on record would show that he drove the vehicle in a rash and negligent manner without having headlight on his scooter and dashed the lorry which would indicate that he too contributed for the accident. In such an event, he argued, the lower Tribunal ought to have apportioned the responsibility between the two drivers instead of holding that the lorry driver alone was responsible for the accident. On the aforesaid pleas, he sought to repudiate the liability on the Insurance Company.

b) Nextly arguing on the quantum of compensation he would submit that the Tribunal having observed that there was no reliable evidence to prove the occupation and income of the deceased and that, for non-earning members, the Tribunals are generally fixing the notional income at Rs.15,000/- as per Second Schedule of Motor Vehicles Act, 1988 (for short

“M.V.Act”), however, strangely fixed the notional income of the deceased as Rs.21,000/- on the ground that the deceased was stated to be a washerman. Learned counsel argued that when the Tribunal agreed that there was no reliable evidence for the occupation and income of the deceased, it ought to have fixed his notional income at Rs.15,000/- p.a following the Second Schedule of the Act but not at Rs.21,000/- and due to this folly, the compensation was unduly hiked. Learned counsel thus, at the first instance sought for exempting the Insurance Company from the liability and alternatively to fix the contributory negligence on the deceased also and reassess the compensation suitably.

5) Per contra, while supporting the Award learned counsel for respondents/claimants argued that there was overwhelming evidence in the form of PW.2 and Ex.A.3—charge sheet showing that the lorry driver was responsible for the accident and as against the same, the Insurance Company pitted the interested evidence of RW.1, who was none other than the driver of the offending lorry and therefore, the Tribunal rightly placed reliance on the evidence placed by the claimants in preference to the interested evidence of RW.1 and held that the lorry driver was responsible for the accident. That finding being based on the reliable evidence, the question of holding deceased contributed for the accident does not arise. Learned counsel further argued that as the accident was occurred on account of RW.1’s leaving the vehicle on the middle of the road unattended, the Insurance Company cannot escape its liability.

a) Regarding the compensation, he would argue that the deceased was a washer-man and having regard to it, the Tribunal rightly fixed his notional income as Rs.21,000/- p.a and in that view, the compensation cannot be harped to be excessive.

6) In the light of above rival arguments, the points for determination are:

(i) *Whether the Tribunal was right in holding that the lorry driver was solely responsible for the accident and thereby fastening liability on Insurance Company?*

(ii) *Whether the compensation fixed by the Tribunal was just and reasonable or needs interference?*

(iii) *To what relief?*

7) **POINT No.1:** The accident, involvement of lorry bearing No.AP 16 U 9556 and scooter bearing No.AP 28 8531 and death of deceased are not in dispute. It is also an admitted fact that on the midnight of 06.05.2005, the deceased while going on scooter dashed behind the stationed lorry and died. In this context, the point is whether the lorry driver left the vehicle on the middle of the road without putting on the indicator lamps and other objects around the vehicle as alleged by the claimants or whether the deceased himself drove his scooter in a rash and negligent manner and dashed behind the lorry and thus contributed for the accident. Both the parties adduced evidence in their own way but ultimately, the lower Tribunal placed reliance on claimant's evidence.

a) PW.2, who is said to be an eye witness, was examined on behalf of the claimants. He deposed that while he was proceeding on his scooter from Kukatpally to Miyapur, he witnessed the accident, as before accident, the deceased was proceeding ahead of his vehicle. He stated that there were no streetlights at the place of accident and while the deceased was proceeding on his scooter, dashed against the offending lorry which was stopped on the middle of the road and by the side of the divider. He asserted that the lorry was negligently parked by the side of the divider and in the middle of the road without switching on the parking lights and placing stones or other objects around the lorry to give caution to the passersby. He further stated that since there were no indicators to the lorry, it was not visible in the darkness. He thus asserted that the accident was occurred due to the wrong parking of lorry and failure of its driver in taking precautions. Though this witness was intensely cross-examined, it was not established that this witness had any sort of connection with the deceased's family to depose falsehood in favour of the claimants. According to him, he was a businessman residing at Kukatpally whereas the deceased was a washer-man. He was also cross-examined with regard to the mode of occurrence of accident as spoken by him but with regard to this fact also, his evidence could not be shattered. It was only elicited that the road at the place of accident was a double road with a divider in the middle and the divider was to the right side of the stationed lorry and there was vacant road space to the left side of the lorry. Thus the evidence of independent witness is to the effect that the lorry driver parked the vehicle on the middle of the road by the side of the divider and carelessly left it without switching

on the parking lights and placing the indicators around the vehicle. The evidence of PW.2 got fortified by Ex.A.3—charge sheet wherein, police too after investigation, found fault with the lorry driver and charge-sheeted him. This is the evidence on behalf of claimants.

b) As against above, the evidence of RW.1 is to the effect that, on the night of 06.05.2005 while he was driving the lorry from Secunderabad towards Miyapur, a mechanical problem was caused and due to the breakdown of joint of the cross, the vehicle was stopped on the road at about 12:00 midnight. He stated that he switched on the parking indicators and informed his supervisor and on being assured by him that a mobile repair van would be sent, he waited on the spot on the side of the divider behind the vehicle. Then his version is that he heard a sound indicating that a vehicle was stopped after application of brakes. He further stated that in the darkness, one scooter dashed against the stationed lorry and the lights of the scooter were not in a condition. He further stated that scooterist drove the vehicle at high speed and applied sudden brakes and with great impact the scooter dashed the stationed lorry. With regard to the topography, he stated that road at the accident spot was a four lane road with a divider in the middle and there was sufficient space on the side of the stationed vehicle for two vehicles to pass. He stated that the accident was occurred due to the rash and negligent driving by the scooterist. He denied the suggestion in the cross-examination to the effect that he did not switch on the parking lights and left the lorry on the middle of the road and went away. He admitted that his vehicle was stranded by the side of the

divider. When the evidence of RW.1 is scrutinized, he admits that his vehicle was stranded by the side of the divider, which matches with the evidence of PW.2 and charge sheet. It means, his lorry was halted on the road but not off the road. Further, the evidence of all the witnesses would show that it was dark of the night and no streetlights were there at the place of accident. In such scenario, the deceased came behind the lorry and unable to locate it, dashed behind the lorry. If really, the parking lights and indicators were there for the lorry as claimed by RW1, the deceased would have been in a position to avert the ghastly accident. Therefore, when even the admitted facts and evidence of RW1 are taken into consideration, it would appear that the fault squarely lies with the lorry driver but not the deceased. Therefore, either of the arguments of the Insurance Company that the deceased himself was solely responsible for the accident or at least he should be held responsible for contributing accident cannot be countenanced. Since the accident was occurred due to careless parking of the vehicle by RW.1, his owner and insurer cannot disown their responsibility. It is not necessary that their liability would arise only when the vehicle was in movement and caused accident. Suffice to invoke their liability if the accident arose out of the use of the vehicle in a public place as laid down under Sec.147 (1) (i) of M.V.Act. Therefore, the lower Tribunal was perfectly right in holding that the lorry driver was responsible for the accident and the owner and insurer were vicariously liable. Accordingly this point is answered against the appellant.

8) **POINT No.2:** With regard to this point, the Tribunal though discarded the evidence of PW.2, however, seems to have believed that the deceased was a Dhobi and fixed his notional income as Rs.21,000/- p.a and accordingly, computed the compensation. I find no illegality in such fixation. Even the evidence of PW2 with regard to the avocation of the deceased is discarded, still there is ample and reliable evidence on record with regard to the avocation of the deceased. For instance, in Ex.A.2—inquest report and Ex.A.4—PME Report, the deceased was referred as a washer-man. These records being prepared within short time after the accident, their authenticity with regard to the avocation of the deceased need not be doubted. Further, in Ex.A.3—charge sheet also the deceased was referred as a washer-man. Having regard to the nature of his avocation, the Tribunal rightly fixed his annual income at Rs.21,000/-. At the outset, the compensation awarded under different heads is just and reasonable and there is no need to interfere. This point is answered accordingly.

9) **POINT No.3:** In the result, I find no merits in the appeal and accordingly, the same is dismissed. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 09.09.2016

scs