

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

M.A.C.M.A. No.2889 of 2009

JUDGMENT:

Dissatisfied with the Award dated 31.10.2006 in OP.No.2 of 2002 passed by the Chairman, M.A.C.T-cum-I Additional District Judge, East Godavari at Rajahmundry (for short 'the Tribunal'), the claimants preferred the instant appeal.

2 a) The factual matrix of the case is thus:

On 18.2.1997 A. Malleswara Rao as pillion rider, was going from Samarlakota towards Kakinada on a scooter bearing No. AP 5 H 1737 and at about 10.30 pm when the scooter reached near Mutyalamma Temple in the outskirts of Venkata Krishna Puram, the driver, who was riding the scooter, dashed behind a stationed lorry which was parked on the middle of the road without any parking signals. As a result, all three persons, who traveled on the scooter, died on the spot. It is averred that the accident was occurred due to fault of the driver of Tipper Lorry and due to the sudden demise of deceased —Alluri Malleswara Rao, the claimants became destitutes. On these averments, the claimants, who are wife, son and mother of the deceased, filed O.P.No.2 of 2002 under Sections 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos. 1 to 3, who are the driver,

owner and insurer of the defending vehicle and claimed Rs.3,00,000/- as compensation under different heads mentioned in OP.

- b) R1 and R.2 remained *ex parte*..
- c) R.3 filed written statement denying all the material averments in the claim petition and urged to put the claimants to strict proof. It contended that the accident was occurred due to rash and negligent driving of the scooter. Finally, it contended that compensation claimed by the claimants is excessive and exorbitant.
- d) During trial, PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of claimants. On behalf of respondents, Rw.1 was examined and Exs. B.1 to B.3 were marked.
- e) The Tribunal, on appreciation of both oral and documentary evidence, awarded Rs.2,91,200/- as compensation under different heads as below:

Loss of earnings	Rs. 2,59,200-00
Loss of consortium	Rs. 15,000-00
Loss of Estate	Rs. 15,000-00
Funeral Expenses	Rs. 2,000-00

Total	Rs. 2,91,200-00

The tribunal came to the conclusion that there was

contributory negligence on the part of rider of the scooter and the driver of the lorry and apportioned liability at 50% each and accordingly awarded Rs.1,45,600/- out of Rs.2,91,200/- as compensation, since the owner and insurer were not added as parties.

Hence, the appeal by the claimants.

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

4) Heard arguments of Sri Chandra Sekhar Illapakurti, learned counsel for Appellants and of Sri Somanchi Venkateswarlu, learned counsel for Respondent No.3. Notice sent to R.2 served, but none appeared. As per Memorandum of Appeal, R.1 is not a necessary party.

5a) Criticizing the Award, learned counsel for appellants/claimants argued that the Tribunal erred in fixing contributory negligence on the rider of the scooter in spite of the fact that the entire fault lies with the lorry driver as he parked lorry on the middle of the road in the night time without placing any parking lights or parking stones around the vehicle and thereby the accident was caused. He further submitted that the entire liability should have been fixed on the driver of the lorry.

b) Secondly, he argued that the compensation awarded under different heads is very low. Expatiating he argued that the deceased was earning Rs.100/- per day,

but the Tribunal fixed his earnings at Rs.60/- per day and computed compensation and thereby, the compensation was drastically reduced. Further, the Tribunal awarded meager amounts towards loss of consortium and funeral expenses.

He thus prayed that the compensation may be revised by allowing the appeal.

6) Per contra, supporting the award, learned counsel for 3rd respondent/Insurance Company argued that the scooterists at the time of accident were having triple riding and proceeding with high speed and thereby the accident was occurred and therefore, the entire fault rests on them only and, therefore, the Tribunal ought to have fixed entire liability on the rider of the scooter. So far as quantum of compensation is concerned, the learned counsel argued that compensation awarded under different heads was just and reasonable and there is no need to revise the same. He thus, prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

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

8) **POINT:** Accident, involvement of lorry bearing No. AIJ 7477 and Scooter bearing No. AP 5 H 1737 and the death of the deceased are not in dispute. The contributory negligence is concerned, the Award shows that the

Tribunal in para Nos. 37 to 39 having observed that three persons were riding the scooter which went and dashed the stationed lorry and also on further observation that the lorry stationed on the road at the night time and that the drivers of both the vehicles were responsible for the accident, apportioned the liability in the ratio of 50 : 50. On perusal of the record though the finding of Tribunal that both the vehicle drivers are responsible, can be accepted, the apportionment of the liability cannot be countenanced. It is true that before accident, three persons were riding on the scooter and the scooter went and dashed behind the stationed lorry. In that view, there is no demur that the driver of the scooter was at fault.

9) Coming to the fault of the lorry driver, as per Ex.A.1 —FIR lodged by the owner of the vehicle, the lorry was going from Samarlakota to Kakinada on 18.02.1997 and at about 7.00 PM when the lorry reached Mutyalamma tree, the rear tyre of the lorry was panchured and therefore it was stopped and the driver went to Kakinada and the owner remained at the lorry. At about 10.30 pm, the ill-fated scooter came behind the lorry and dashed on the rear side of the tipper lorry. This FIR was lodged by R.1 in the OP, who is the owner of the said Tipper Lorry. It is important to note that in the FIR, which is the earliest document relating to the accident, R.1 has not specifically mentioned that the lorry was parked by the side of the

road and he has also not specifically mentioned that parking lights were switched on and parking stones were placed around the vehicle to caution the passers-by. Therefore, it shows that the lorry was placed on the road without any parking lights and parking stones. In Ex.A.6—Case Diary Report, the topography of the scene of offence was described. It appears that the lorry was placed at a distance of 250 yards to the south of Muthyalamma temple in between Km 2/10 and 4/10. It is further mentioned that at the scene of offence, the tipper lorry was found stationed facing towards Kakinada side and half of it was on eastern side road margin with two right wheels on the road and one wheel was burst and Jakey was near to the lorry rear right rear wheels. From the above description one can conclude that half of the lorry was placed on the middle of the road and the remaining half of the lorry was placed by the side of the road. Therefore, entire lorry was not parked by the side of the road. The report further shows that small tree branches were kept at the rear right side of the lorry . However, it is not mentioned that the parking lights were switched on. Therefore, it is clear that major part of the lorry was kept on the road as its rear tyre was punctured and no parking lights were switched on. In those circumstances, it can be said that major part of the fault lies with the lorry driver, as it was hit due to not keeping the lorry on the extreme road side, so as to avoid

inconvenience to the vehicles passing in that way.

Therefore, in my considered view, the liability of the lorry driver can be fixed at 70%, whereas, the contributory negligence on the part of rider of the scooter can be fixed at 30%.

10. Compensation for other heads are concerned, the Tribunal rightly arrived at Rs.2,59,200/- as loss of dependency. However, the funeral expenses are concerned, the Tribunal awarded meager amount of Rs.2000/-. Going by the dictum in **Rajesh and others V. Rajbir Singh and Others**^[1], the compensation for funeral expenses is enhanced by Rs.2000/- to Rs.25,000/-. Then compensation for loss of consortium is concerned as the deceased died at an young age of 29 years and the first claimant lost her husband in the prime of her youth, considering the observation in **Rajesh's case** (1 supra), compensation for loss of consortium is enhanced to Rs.30,000/-. Thus, the total compensation under different heads is as follows:

Loss of dependency	Rs. 2,59,200-00
Loss of estate	Rs. 15,000-00
Loss of consortium	Rs. 30,000-00
Funeral Expenses	Rs. 25,000-00
Total	Rs.3,29,200-00

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Since the contributory negligence of the scooter rider is 30%, the claimants are entitled to only 70% of the above amount, which comes to Rs.2,30,440/-.

11. In the result, this appeal is partly allowed and ordered as follows:

The compensation is enhanced from Rs.1,45,600/- to Rs.2,30,400/- with proportionate costs and interest at 7.5% p.a. from the date of OP till the date of realization;

Respondent Nos. 1 to 3 in the OP are jointly and severally liable to pay compensation and they are directed to deposit the compensation amount within two months from the date of judgment, failing which, execution can be taken against them.

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

U. DURGA PRASAD RAO, J

Date: 29.06.2016

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[\[1\]](#) (2013) 9 SCC 54