

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A. No. 365 OF 2008

JUDGMENT:

This appeal is filed by the appellant/respondent No.2 under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order, dated 27.11.2006, in O.P.No.263 of 2005, passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda at Suryapet.

2. The claimants filed the above O.P. under Section 166 of the Act claiming compensation of Rs.10,00,000/- on account of death of Ramachandrani Rameh (hereinafter referred to as the deceased) in a road accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 07.03.2005 the deceased was going on his Scooter bearing No. AP-9-K-337 towards Nandyal from Kurnool side, at about 9:00 PM when he reached near B.S.N.L Tower, the driver of Auto rickshaw bearing No.AP-21-W-2733, who was going in opposite direction, drove the same in a rash and negligent manner, lost control and hit the scooter of the deceased, due to which the deceased fell down and received severe injuries. On hearing the sound of collision, the Home Guard, who was present near the spot, shifted the deceased to Government Hospital, Nandyal and as the condition of the deceased was very serious, he was shifted to Osmania General Hospital, Hyderabad for better treatment. On 08.03.2005 at 2:30 PM the deceased was succumbed to injuries while undergoing treatment. The deceased was working as Supervisor in Silpha

Electrifications, Hyderabad. At the time of accident, the deceased had wife, minor daughter and old age parents. The deceased was hale and healthy at the time of accident and used to earn Rs.6,700/- per month and contributed the same to the family. Due to sudden demise of the deceased, the claimants lost the sole earning member. The Police Panyam registered a case in Crime No.214 of 2005 for the offence punishable under Section 304-A IPC against the driver of the Auto. According to the claimants, they are entitled to compensation against all the respondents.

5. The first respondent remained *ex parte*.

6. The brief averments made in the written statement filed by the second respondent are that the respondent put the claimants to prove the manner of accident, age, income of the deceased, and also stated that the compensation claimed by the claimants are high, excessive and prayed to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 to 4 were examined and got marked Exs.A.1 to A.23. On behalf of the respondents, no oral evidence was adduced, but Ex.B.1-Insurance copy was marked.

8. Basing on the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of driver of Auto rickshaw bearing No.AP-21-W-2733 and awarded compensation of Rs.4,46,500/- with interest @ 7.5% per annum. Aggrieved by the same, the appellant/respondent No.2 filed the present appeal.

9. Learned counsel for the appellant argued that initially as per the complaint given by Home Guard, Ex.P.1-F.I.R. was registered and in that complaint it was stated that the unknown vehicle hit the scooter of the deceased. But, the Tribunal has grossly erred in not apportioning the negligence on the part of the deceased, who was driving scooter at the time of accident.

10. On the other hand, learned counsel for the respondents argued that the appellant never taken the plea of apportionment of negligence on the part of the deceased before the Tribunal. The Tribunal, after considering the oral and documentary evidence on record, granted compensation to the claimants and the finding of the Tribunal needs no interference by this Court and prayed to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for appellant, the only point that arises for consideration is:

Whether the appellant-insurance company has made out any case to set aside the Award, dated 27.11.2006, passed by the Tribunal in O.P.No.263 of 2005?

12. **POINT:**

A perusal of record shows that on 07.03.2005 the accident occurred due to rash and negligent driving of driver of Auto rickshaw bearing No.AP-21-W-2733, in which the deceased sustained grievous injuries and while undergoing treatment he died in the hospital.

13. P.W.1 is wife of the deceased. She stated that at the time of accident, the deceased was working as Supervisor and earning an

amount of Rs.6,700/- per month. She further stated that due to sudden death, she lost dependency and love and affection. The Tribunal after considering all these aspects, awarded compensation of Rs.4,46,500/-. Though during the course of arguments, learned counsel for the appellant contended that the Tribunal has not apportioned the negligence on the part of the deceased, there is no evidence produced by the 2nd respondent to prove that the deceased also contributed his negligence for causing the accident. Admittedly, the Home Guard, who rescued the deceased and took him to hospital, gave a complaint to the police, but the police after investigation came to the conclusion that Auto bearing No.AP-21-W-2733 is responsible for causing the accident. Therefore, the question of apportionment of negligence on the part of the deceased does not arise as there is no evidence on record to prove the said fact. Therefore, the Tribunal after considering all these aspects, awarded just and reasonable compensation and the said find of the Tribunal needs no interference by this court.

14. Accordingly, the Appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

ANIS, J

Date: 25.11.2016
YVL

HON'BLE SMT JUSTICE ANIS



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