

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4164 of 2004

J U D G M E N T:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order of dismissal dated 05.05.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Warangal, in M.V.O.P.No.431 of 2002.

2. The appellants/petitioners filed the above M.V.O.P under Section 166 of the Act, claiming compensation of Rs.3,00,000/- on account of the death of Raja Komuraiah (hereinafter referred to as 'the deceased') in a motor vehicle accident, that occurred on 01.03.2002.

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 the petitioners are the wife and children of the deceased. On the date of accident, the deceased along with Gundeboina Ravi was returning from Nekkonda on a Scooter bearing No.ATO.5040 and at about 05:30 p.m when they reached Shivanagar Cross Road, an Auto bearing No.AP.36T.9083 driven by the first respondent came in a rash and negligent manner and dashed against the Scooter. As a result of the accident, the deceased fell down, received multiple injuries and

died on 02.03.2002. The deceased was earning Rs.3,000/- p.m from agriculture and milk vending. Petitioners stated that the second respondent is the Insurance Company and first respondent is the owner of the vehicle and they are jointly liable to pay compensation to the petitioners.

5. The first respondent filed the counter and denied the rash and negligent driving of the driver of the Auto and further stated that the claim of compensation by the petitioners is excessive and untenable. Further, the vehicle was insured with the second respondent, and therefore, the Insurance Company only has to pay the compensation.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioners to prove the manner of accident, age and income of the deceased and also stated that the compensation claimed is excessive and untenable and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioners got examined PWs.1 & 2 and got marked Exs.A1 to A4 on their behalf. On behalf of the respondents, no oral evidence was adduced but Ex.B1 got marked.

8. After considering the oral and documentary evidence, the Tribunal held that the deceased had not died due to

injuries in the motor vehicle accident and dismissed the petition.

9. Being aggrieved by the award passed by the Tribunal, the petitioners preferred the present appeal.

10. The learned counsel appearing for the appellants/ petitioners argued that there was a delay of only one day in lodging the report against the driver of the vehicle and as the deceased was in the hospital, nobody has given the complaint. After the death of the deceased, his son gave a report on 03.03.2002. Therefore, there is no negligence on the part of the son of the deceased in lodging the complaint and stated that one day delay is not fatal in these type of cases.

11. On the other hand, the learned counsel appearing for the second respondent argued that the Tribunal has rightly dismissed the petition by considering the oral and documentary evidence on record and therefore the findings of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellants are entitled for compensation as prayed for or not?
2. Whether the dismissal order passed by the Tribunal is just and reasonable or not?

13. **POINTS 1 & 2:** A perusal of the award passed by the Tribunal shows that the Tribunal had dismissed the petition on the ground that there was a delay in lodging the report against the driver of the vehicle and nobody along with PW.2, who was the relative of the deceased and rider of the Scooter at the time of accident, has given the complaint. During the course of hearing, to prove who is responsible for causing the accident, the petitioners had filed the charge sheet with regard to this accident. A perusal of the copy of the charge sheet filed by the petitioners' shows that the son of the deceased gave report on 03.03.2002 after the death of his father. Therefore, there is no negligence on the part of the son of the deceased in lodging the complaint and delay is not fatal in these type of cases. A perusal of the copy of the First Information Report and also the copy of charge sheet shows that deceased died due to rash and negligent driving of the driver of the Auto bearing No.AP.36T.9083, while undergoing treatment in the hospital. Therefore, it is clear that the deceased died due to the accident occurred by the rash and negligent driving of the first respondent.

14. Now coming to the compensation that has to be awarded to the petitioners is concerned, the petitioners are the wife and children of the deceased. According to the evidence of PWs.1 & 2, the deceased was earning Rs.3,000/- p.m from agricultural and milk vending and due to his death they are not in a position to maintain themselves. They had not produced any

evidence to prove the income of the deceased. Therefore, I am of the view that Rs.2,000/- p.m shall be taken as the income of the deceased. In view of the decision reported in **Sarla Verma and others V. Delhi Transport Corporation and another**¹, since the dependents are '4', 1/4th has to be deducted towards personal and living expenses. Therefore, after deducting 1/4th of the income, the contribution to the family comes to Rs.1,500/- X 12 = Rs.18,000/- p.a. Further, considering the evidence of PWs.1 & 2 coupled with documentary evidence, the deceased was aged 40 years at the time of his death. Therefore, the multiplier applicable to the age group of '36 to 40' as per the **Sarla Verma's case** (first cited supra) is '15' and as such, the total loss of dependency comes to Rs.18,000/- X 15 = Rs.2,70,000/-. The first petitioner being the wife of the deceased is entitled for Rs.5,000/- as loss of consortium, and all the petitioners are entitled for Rs.5,000/- as loss of estate. Thus, the total amount of compensation awarded to the petitioners is Rs.2,80,000/- (Rs.2,70,000 + Rs.5,000/- + Rs.5,000/-). Further, the respondents being the owner and the insurer are jointly and severally liable to pay the compensation to the petitioners. On such deposit being made by the respondents, the first petitioner being the wife is permitted to withdraw Rs.2,20,000/- and petitioner Nos.2 to 4 being the children are permitted to withdraw Rs.20,000/- each as their shares.

¹ (2009) 6 SCC 121

15. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

16. Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Appeal shall stand closed.

ANIS, J

Date: 23.09.2016
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