HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A No.533 of 2013

JUDGMENT:

This appeal is preferred questioning Award dated 01.10.2007 in M.V.O.P.No.1505 of 2005 on the file of IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, City Civil Courts, Hyderabad.

2. Respondents herein filed application before IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, City Civil Courts, Hyderabad (for short "lower tribunal") under Sections 163 & 166 of M.V.Act claiming compensation of Rs.4 lakhs for the death of their son Dinesh Singh (for short "the deceased"). They contended that on 29.03.2005 the deceased along with others was proceeding in a Cruiser Maxi Cab bearing No.AP 24V 3080 from Hanmkonda to Hyderabad and the said vehicle involved in a accident due to the rash and negligent driving of the driver, as a result, 9 persons including Dinesh Singh died on the spot and remaining sustained grievous injuries. They contended that Dinesh Singh was 20 years old and working as painter and earning Rs.3,500/- per month contributing the entire income for the family and that the claimants are completely dependent on the earnings of the deceased and on account of death of Dinesh Singh, claimants have lost not only their only son but also their breadwinner.

3. Insurance company resisted the claim of parents of the deceased contending that they have to prove that the driver of the vehicle was holding a valid and effective driving licnece with a valid permit. It further contended that the deceased was an

unauthorized passenger and the owner has violated the terms and conditions of the policy by carrying more passengers than permitted strength and that the insurance company is not labile to pay any compensation. On these contentions, lower tribunal conducted enquiry, during which, two witnesses are examined on behalf of claimants and 6 documents are marked. On behalf of insurance company one witness is examined and 1 document is marked and on a over all consideration of oral and documentary evidence, tribunal has not accepted the objection of insurance company and recorded that the accident was not due to overload but due to driving of the vehicle at high speed which is purely negligent act of the driver of the vehicle. Lower tribunal has granted Rs.2,88,000/- as compensation for the death of Dinesh Singh. Questioning the same, insurance company preferred the present appeal.

4. Heard arguments.

5. Advocate for appellant submitted that the tribunal failed to notice that there were 18 people travelling in the vehicle at the time of accident, whereas, the permitted capacity was only 12 including driver, as such there is a clear violation of policy conditions. He further submitted that the tribunal erred in taking the income of deceased at Rs.2,400/- per month without any evidence and that the compensation fixed by the tribunal is high and excessive.

6. On the other hand advocate for claimants submitted that deceased was a painter and he died at very young age of 20 years and the compensation granted by the tribunal was very meager. He further submitted that tribunal rightly negatived the objections of insurance company as the accident was not due to overload of

the passengers, but it was due to pure negligence of the driver, for which, the owner and insurance company are jointly and severally liable to pay compensation and that there are no grounds to interfere.

7. Now the point that would arise for my consideration is:

Whether the order of lower tribunal is legal, proper and correct?

POINT:

8. There is no dispute with regard to accident and also death of Dinesh Singh in the said accident. There is also no dispute that deceased was travelling as a passenger in the Maxi cab from Hanmkonda to Hyderabad. As seen from the record, the accident was purely due to the rash and negligent driving of the driver of the Maxi cab who drove the vehicle at high speed and hit the RTC bus. As rightly recorded by the lower tribunal the accident was not due to the over load of the passengers but purely due to negligent driving of the cab at high speed. The evidence on record particularly M.V. Inspectors' report and rough sketch of scene of offence clearly supported the version of claimants that the accident was due to negligent driving of the Maxi cab driver. Lower tribunal has elaborately discussed the entire evidence concerning the accident and came to a right conclusion that the deceased died due to rash and negligent driving of the driver of the vehicle bearing No.AP 24 V 3080 and that the claimants are entitled for compensation. I do not find any wrong appreciation of evidence nor any perversity in the findings of the tribunal, therefore the objection of insurance company is not tenable.

9. The other objection of insurance company is that the tribunal has taken Rs.2,400/- per month as income of the

deceased without any evidence. As seen from the record, claimants contended that deceased was earning Rs.3,500/- per month but the tribunal has not accepted that amount and fixed Rs.2,400/- as his monthly income considering his age and profession. As seen from the evidence, the deceased was a painter and aged about 20 years and therefore his earnings as taken by the tribunal cannot be held on higher side or abnormal. Even if the minimum wages are taken, a painter can definitely get that amount in the year 2005. Considering these aspects, objection of insurance company with regard to the earnings of the deceased cannot be accepted.

10. On a scrutiny of the material, I am of the considered view that tribunal has rightly granted Rs.2,88,000/- as compensation fixing liability on both insurance company and owner and there are no grounds to interfere with the same.

11. For these reasons, the appeal is devoid of merits and liable to be dismissed.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 14-03-2016.
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