

*** SMT. JUSTICE T. RAJANI**

+ MACMA No.338 OF 2008

% 24.03.2017

The National Insurance Company Ltd.

...Appellant

Vs.

\$ Nimma Sita Lakshmi and others

.... Respondents

! Counsel for the Petitioner: Sri A. Veera Swamy

Counsel for Respondents: Sri Jayanti S.C. Sekhar

<Gist:

>Head Note:

? Cases referred:

¹ 2014 Law Summary (Hy) 1049

² [2001(1) ALT 495] {APHC - DB



SMT. JUSTICE T. RAJANI

M.A.C.M.A.No.338 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is respondent No.3 in O.P.No.807 of 2003 on the file of the Motor Accidents Claims Tribunal (I ADJ Court) Vizianagaram (for short 'the Tribunal'), assailing the order of the Tribunal dated 20.12.2006, on the ground that the Tribunal ought to have dismissed the claim for non-joinder of the driver, owner and insurer of the vehicle which was being driven by the deceased; the Tribunal did not decide the issue of negligence in the right perspective and fastened entire liability on the appellant; the Tribunal erred in taking Rs.5,500/- per month as the income of the deceased, though the deceased was a temporary employee. It also erred in adopting multiplier '15'.

2. At the hearing, learned counsel for the appellant, though tried to make an argument on the aspect of negligence, conceded that none had been examined to disprove the evidence of P.W.2, who spoke about the negligence. The counsel persuaded the court to assume that there was contributory negligence on the part of the deceased, going by the impact of the accident which led to the death of the deceased. But when there is positive evidence on the aspect of negligence and when there is possibility of the impact of the crime vehicle leading to the death of the deceased, no such assumption can be made by this court. Hence, this court does not find any reason to interfere with the

order of the Tribunal, so far as its finding on the issue of negligence is concerned.

3. The counsel for the appellant argued about the non-addition of driver as a party. In the ruling relied upon by the counsel for the appellant in **The New India Assurance Company v. Margam Padmavathi and ors.**¹, there was a dispute with regard to the identity of the driver. Hence, in those circumstances, this Court held that there should have been a direction to add the driver as a party. There is no parity of situation and hence it cannot be taken aid of.

4. In the considered opinion of this court, when there is no such issue, non-addition of driver as a party may not affect the claim. An analogous judgment of this court in **Meka Chakra Rao v. Yelubandi Babu Rao**² supports the above reasoning, as this court has held that even in the absence of owner of the vehicle, statutory liability of insurance company survives for consideration. Therefore, the safe conclusion would be that non-addition of driver would not non-suit the claimants.

5. The counsel is also not able to make out any valid argument as to why the income as taken by the Tribunal need not be approved. In fact, this court observes that the salary of the deceased is shown to be more than what was accepted by the Tribunal and he would be entitled for future hike of salary also which was not considered by the

¹ 2014 Law Summary (Hy.) 1049

² [2001(1) ALT 495] {APHC - DB}

Tribunal. The Tribunal, while considering that though the deceased was a temporary employee, observed that he was drawing all the benefits which will be given to every Government employee, as stated by P.W.2, but, still, it did not accept the salary as shown in the salary certificate. Though the counsel did not make any argument that the net salary of the deceased has to be taken, even assuming that such argument is extended, there is absolutely no reason for the Tribunal to arrive at the net salary as Rs.2,755/-. Though P.W.2 has stated that the gross salary of the deceased is Rs.5,733/- and that his net salary is Rs.2,755/- and that Rs.2,832/- are the recoveries from the salary, he did not specify the nature of deductions. Unless there are statutory deductions, they need not be deducted from the gross salary in arriving at the net salary. With regard to multiplier also, there is absolutely no reason for the appellant to plead in the grounds of appeal that age of the deceased was taken as 34 years and it ought to have been taken as 32 years. Lesser the age, higher would be the multiplier. Hence, there is no soundness in the said argument. Moreover, the multiplier for both the ages is same as per Schedule 2 of the Motor Vehicles Act and also as per the multipliers prescribed by the Apex Court in **Sarla Verma & Ors. v. Delhi Transport Corp.& Anr.**³ The Tribunal has taken the age of the deceased as 38 years. Hence, there cannot be any grievance for the appellant with regard to the application of the multiplier.

³ AIR 2009 SC 3104

6. Hence, the appeal is dismissed. No order as to costs.

Miscellaneous petitions if any pending in the appeal stand closed.

T. RAJANI, J

March 24, 2017

MRR

Note: L.R. copy be marked

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