

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 668 of 2010

ORDER:

This appeal is arising out of the order dated 06.01.2010 made in O.P.No.243 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle (for short, 'the Tribunal'). M/s New India Assurance Company Limited, who is the 2nd respondent in the said O.P., is the appellant herein.

2. The respondents-claimants filed O.P.No.243 of 2008 before the Tribunal claiming a compensation of Rs.5,00,000/- on account of the death of one Srinivasulu @ Srinu (hereinafter referred to as 'the deceased') in an accident that occurred on 31.08.2008. Brief facts of the case are that on 31.08.2008, the deceased, along with the driver of mini lorry bearing No.AP-03-X-4625, was proceeding to Kakinada by taking tomatoes in their mini lorry from Madanapalle market, and when they reached Dindaluru petrol bunk on NH5 on Eluru-Kakinada road, they stopped their mini lorry on the left side of the road. At about 5:30 a.m. on the next day, i.e. 01.09.2008, when the deceased was checking the blow to the tires of mini lorry, the driver of the offending vehicle, i.e., Tata 207 bearing No.AP-16-Y-8819, drove the vehicle in a rash and negligent manner and dashed the backside of the deceased Sreenivasulu, as a result the deceased suffered fracture injuries on his head and all over his body and he was immediately shifted to Government Hospital, Eluru, for treatment, and on the advice of the doctor at Government Hospital, Elugu, the deceased was taken to Government General Hospital, Vijayawada, and the deceased succumbed to the injuries on 03.09.2008 while undergoing treatment.

3. The Tribunal awarded a compensation of Rs.2,46,000/- with interest at 7.5% per annum. The appellant-Insurance company, being aggrieved by the impugned award, preferred the instant appeal mainly on two grounds. Firstly, the Tribunal has not considered the aspect of negligence on the part of the parked vehicle and fixed the entire liability on only one vehicle, i.e., the vehicle which dashed the parked vehicle, and secondly, the quantum of compensation is high.

4. It is the submission of the learned Standing Counsel for the appellant-Insurance company that the age of the mother of the deceased was shown as 45 years in the Claim Petition, whereas in the evidence of PW1, her age was admitted as 60 years as on the date of accident. The Tribunal has taken the age of the mother as 45 years, which is incorrect, and her age should be taken as 65 years.

5. Per contra, learned counsel for the claimants submits that, in respect of the first contention, as per the evidence of PW3, who is the driver of the parked vehicle, the vehicle was parked on the left side of the road and the road is a double-lane road and also a State Highway. And therefore, there is no negligence on the part of the driver of the parked vehicle, and the Tribunal has correctly observed the said fact and rightly fastened the liability only on the vehicle that dashed the parked vehicle.

6. With regard to the age of the deceased, it is the contention of the learned counsel for the claimants that the Tribunal has given a clear reasoning for taking the age of the mother of the deceased as 45 years and

not as 60 years. Learned counsel has drawn the attention of the Court to paragraph 13 in page 7 of the impugned order, which reads as under:

“13. The age of the 2nd petitioner is shown 45 years, whereas the age of the 1st petitioner is shown 50 years. But, in the cross examination, P.W.1 has stated that his present age is about 65 years and his wife is five years younger to him. Coming to the evidence of P.W.2 she has given her age 35 years in chief examination, whereas in the cross examination she says that her age is 30 years as on now, but not 40 years as suggested to her. On perusal of the positive photograph of P.W.2, the age of the petitioner may be above 45 years as such, the Tribunal is intended to notionally take the age of P.W.2 above 45 years and then the relevant multiplier applicable as per II Schedule of M.V. Act is ‘13’.

7. Placing reliance on the above extracted paragraph 13 of the impugned order, learned counsel for the claimants submits that the Tribunal has rightly taken the age of the mother of the deceased as 45 years and the same does not warrant any interference. Learned counsel placed reliance on the decision of the Supreme Court in **M. Mansoor and another v. United India Insurance Co. Ltd.**¹, wherein the apex Court, in paragraph 15 of the judgment, observed as under:

“15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation.”

8. Learned Standing Counsel for the appellant-Insurance company submits that the decisions relied upon by the respondents-claimants are not

¹ 2013 ACJ 2849

applicable at this point of time since the law existing as on the date of rendering the judgment by the Tribunal has to be taken into consideration.

9. The submission of the learned Standing Counsel cannot be accepted in view of the fact that the appeal is a continuation of the orders passed by the Tribunal. In the light of the decision cited by the learned counsel for the respondents-claimants, the age of the parents/dependents need not be taken into consideration for the purpose of selection of multiplier and the age of the deceased has to be taken into consideration instead of the age of his dependents. However, in the present case, the appellant before this Court is the Insurance company and not the claimant.

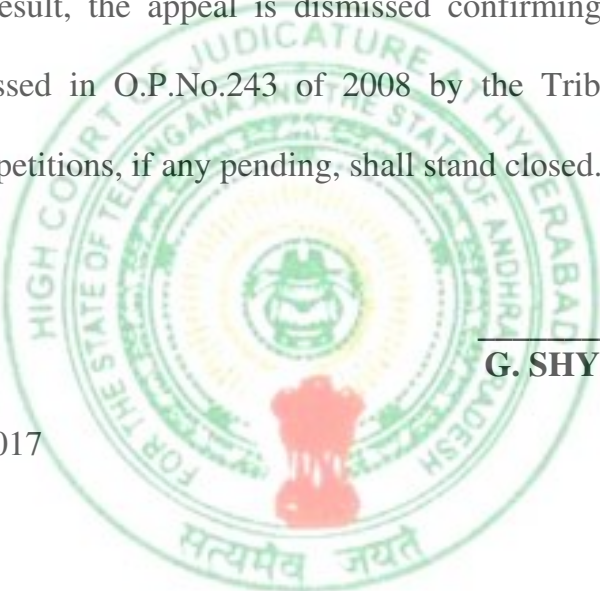
10. In view of the facts and circumstances of the case, and in the light of the above discussion, it is not necessary to decide as to the correct age of the mother of the deceased in this appeal. Therefore, there are no valid grounds to interfere with the order of the Tribunal in taking the age of the mother of the deceased as 45 years.

11. The other contention of the learned Standing Counsel for the appellant is that there is negligence on the part of the driver of the vehicle who parked his vehicle on the side of the road at 5:30 AM, without putting on any indicator/sign. It is submitted that in the early morning there may be some fog and without putting on parking lights, it would be difficult for anybody to notice a parked vehicle on the road and therefore there is negligence on the part of the driver of the parked vehicle.

12. Even this contention with regard to the negligence of the driver of the parked vehicle cannot be accepted in view of the reasons mentioned by the Tribunal in the impugned order.

13. Admittedly, PW3 has stated that the road on which the vehicle was parked is a double-road and it is also a State Highway and the vehicle was parked on the left side of the road and therefore no negligence can be attributed to the driver of the parked vehicle. Hence, I see no merit in this appeal and the same is liable to be dismissed.

14. In the result, the appeal is dismissed confirming the order dated 06.01.2010 passed in O.P.No.243 of 2008 by the Tribunal. No costs. Miscellaneous petitions, if any pending, shall stand closed.



G. SHYAM PRASAD, J

23rd January, 2017

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THE HON'BLE SRI JUSTICE G. SHYAM PRASAD



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