

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1107 OF 2010

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, challenging the order and decree, dated 01.05.2009, passed in O.P.No.1393 of 2007, by the Chairman, Motor Accident Claims Tribunal (I Additional District Judge) at Khammam (for short, the Tribunal).

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), by the first claimant father and second claimant mother of deceased Katragadda Rajasekhar. They claimed compensation of Rs.3,00,000/- on account of the death of Katragadda Rajasekhar in the motor accident occurred on 16.04.2003.

3. The brief facts of the case are that on 16.04.2003 at about 3.00 pm., while the deceased Katragadda Rajasekhar was going on his motorcycle from Wyra to Khammam to attend his person work, and when he reached Eenadu Press, an auto bearing No.AP20V 3247 came in a rash and negligent manner at high speed and dashed against the motorcycle of the deceased. In the accident, Katragadda Rajasekhar received grievous injuries. He was shifted to Kinnera Super Speciality Hospital, Khammam. While undergoing treatment, he died on 18.04.2003. The deceased was selected as Teacher in Primary School, Thalluru and was drawing a salary of Rs.1,200/- per month on consolidated basis. He was

about to complete his probation and would have got Rs.6,000/- per month from 18.01.2004.

6. The second respondent, The New India Assurance Company Limited, filed its counter contending that the compensation claimed by the claimants is excessive.

7. The Tribunal, on consideration of evidence, held that there was contributory negligence on the part of the deceased at 50% and on the part of the driver of the auto at 50%. The Tribunal has granted Rs.2,16,667/- towards compensation holding that respondents 1 and 2 are jointly and severally liable to pay the same.

8. The points for consideration in this matter are:

- (i) Whether there is no negligence on the part of the driver of the auto involved in the accident?;
- (ii) Whether the liability of the insurance company fixed by the Tribunal at 50% can be exonerated?; and
- (iii) Whether the compensation awarded by the Tribunal is excessive?

9. Heard the arguments of Ms. I.Mammu Vani, learned Standing Counsel for the appellant, Sri C.Pratap Reddy, learned counsel for respondent Nos.1 and 2, and Sri V.Srinivasa Rao, learned counsel for respondent No.3.

10. Learned counsel for the appellant contended that there is no contributory negligence on the part of the driver of the auto and that the accident occurred only due to the negligence of the

deceased. Learned counsel, placing reliance on the statements recorded by the Police under Section 161 of Cr.P.C., submitted that there is negligence on the part of the deceased and there is no negligence on the part of the driver of the auto.

11. Learned counsel for respondents 1 and 2 submits that there is no negligence on the part of the deceased at all, but the Tribunal fixed the contributory negligence on the part of the deceased at 50%.

12. Admittedly, this is a case of collision between two vehicles i.e., a motorcycle and an auto. The witnesses to the accident, who traveled in the auto, were examined as P.Ws.2 and 3. They have clearly deposed that the accident occurred due to the rash and negligent driving of the driver of the auto and that the driver of the auto intended to reach the destination quickly and drove the auto in a rash and negligent manner and dashed against the motorcycle.

13. It is pertinent to note that P.W.3 stated that the motorcycle came in opposite direction which was coming from Wyra side and the auto driver was confused and had driven the auto in a high speed and both the vehicles have collided. The manner in which the accident occurred would clearly indicate that this is a case of head on collision. There is some negligence on the part of the deceased also, and therefore, the Tribunal has rightly held that the deceased was also negligent and apportioned the negligence as 50% to the deceased and 50% to the driver of the auto.

14. Therefore, I do not see any merits in the contentions raised by the appellants and the respondents that there is no negligence either on the part of the deceased or on the part of the driver of the auto. Therefore, I do not see any reason to interfere with the finding of the Tribunal in this regard.

15. The other contention of learned counsel for the appellant that the Tribunal has taken the income of the deceased as Rs.50,000/- without any proof of income. She further submitted that even if the income of the deceased is taken as Rs.3,000/- per month, as a worker working in an unorganized sector, his income would be Rs.36,000/- per annum and not Rs.50,000/- per annum, and therefore, sought for compute the compensation taking the notional income of the deceased as Rs.36,000/- per year instead of Rs.50,000/-.

16. Learned counsel for respondents 1 and 2 submitted that the deceased was selected as a School Teacher and his monthly income was Rs.1,200/- per month at that time and there was possibility of enhancement of salary upto Rs.5,000/- per month. Basing on the same, the Tribunal had taken into consideration the income of the deceased as Rs.50,000/- per annum, which does not require any interference.

17. The Tribunal rightly taken the income of the deceased as Rs.50,000/- per year basing on the evidence before it. In view of

the facts and circumstances of this case, it is appropriate to confirm the award passed by the Tribunal.

18. In the result, the appeal is dismissed, and the order and decree dated 01.05.2009 passed by the Tribunal in O.P.No.1393 of 2007 is confirmed.

19. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand closed as infructuous. No order as to costs.

Date: 03.03.2017.
TJMR



GUDISEVA SHYAM PRASAD, J