

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.Nos.1439 & 1547 of 2010

COMMON JUDGMENT:

These two appeals arise out of the award dated 14.05.2010, passed in O.P.No.653 of 2009 by the learned XXII Additional Chief Judge-cum-Chairman, Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad (for short "the Tribunal"). MACMA No.1439 of 2010 is filed by the Insurance Company, who is 2nd respondent in the OP. MACMA No.1547 of 2010 is filed by the claimants being dissatisfied with the award passed by the Tribunal.

The claimants filed the claim petition claiming a compensation of Rs.8,00,000/- on account of death of E.Krishna, who died in a motor accident that occurred on 18.02.2009. The claimants are the wife, two daughters and father of the deceased.

The brief facts of the case is that on 18.02.2009 at about 9.25 p.m one DCM Either Van bearing registration No.AP28X-6768 was stationed in the middle of the road with a load of big iron rods projecting outside of the vehicle at Bio Vaxin factory without any signals or parking lights. The deceased by that time came from Chevella side on his scooter and dashed the DCM van from behind, as a result, the iron rods pierced into his body and he died on the spot. The accident occurred due to the negligence in parking DCM van in the middle of the road without taking proper precautions. The deceased was aged about 32 years, he was hale and health by the time of accident, he was doing centering work and earning Rs.6,000/- per month. The 1st respondent in the OP is the owner of the DCM and the 2nd respondent is the insurer.

The Insurance Company filed the counter denying its liability, manner of accident, age and income of the deceased. It is further contended that the deceased himself was negligent in driving his scooter and causing the accident.

Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident took place on 18.02.2009 at about 9.25 p.m due to rash and negligent driving of DCM Eicher bearing No.AP28X-6768?
2. Whether the petitioners are entitled for compensation. If so, to what amount and from whom?
3. To what relief?

On behalf of the claimants, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.6. On behalf of the respondents, RW 1 was examined and got marked Exs.B1 to B8.

The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.4,17,500/- as against the claim of Rs.8,00,000/-.

In so far as the appeal of the insurance company is concerned, their contention is that the Tribunal erred in not taking into consideration the contributory negligence on the part of the deceased, who drove his scooter in high speed and dashed against a stationed vehicle which is parked on the extreme left side of the road.

The learned counsel for the claimants submits that the investigation conducted by the police clearly shows that the accident took place when the deceased was trying to overtake the stationed lorry and in the meantime, the

headlights of the oncoming vehicles have caused glaring his eyes and therefore, the deceased hit the stationed DCM vehicle and the accident took place. The learned counsel, on this aspect, has placed reliance on the decision of the Supreme Court in *Raja Rani v. Oriental Insurance Co.Ltd.*¹ wherein it was held as under:

“18. Hence in the instant case, we find that there was contributory negligence on the part of the deceased and accordingly the claimant was entitled to only 50 per cent of the total amount of loss of dependency.”

Upon perusing the above decision, it is noticed that the facts before the Supreme Court are different with the facts of the present case. In that case, the truck was parked in the middle of the road and as the lights of the truck being not on and owing to lights of another vehicle coming from opposite direction, the deceased could not avoid the accident. But in the present case, the main violation committed by the driver of the DCM is that he was carrying iron rods in the vehicle, protruding outside the body of the vehicle, and he did not take any precautions while parking the vehicle on the road side. Due to which, while the deceased was proceeding on his scooter and owing to the lights of the oncoming vehicles, he did not observe the iron rods which are protruding outside the DCM, hit the DCM, as a result, the iron rods were pierced into his chest and neck, which was the root cause of the death of the deceased. Therefore, there is no contributory negligence on the part of the deceased.

In this connection, Rules 422 and 423 of the A.P.Motor Vehicles Rules, 1989 may be used to be extracted:-

“422. Load-projection of:- No person shall drive, and no person shall cause or allow to be driven, in any public place any motor vehicle which is

¹ 2009 ACJ 2003

loaded in a manner likely to cause danger to any person or in such manner that the load or any part thereof or anything extends:-

- (i) laterally beyond the side of the body or beyond a vertical plane is prolongation of the side of the body;
- (ii) to the front beyond the foremost part of the vehicle;
- (iii) to the rear to a distance exceeding 1.5 metres beyond the rear-most of the vehicle excluding any luggage carrier; and
- (iv) in height by distance which exceeds 3.8 metres from the surface upon which the motor vehicle rests.

423. Precaution with goods vehicle with projecting load:-

Clause (iii) of Rule 422 shall not apply to a goods vehicle when loaded with any pole or other projecting thing so long as:-

- (i) the projecting load falls within the limits of the body of a Trailer being drawn by the goods vehicle; or
- (ii) the distance by which the pole or other thing projects beyond the rear-most point of the vehicle does not exceed 1.5 metres; and
- (iii) there is attached to the rear of such pole or other thing in such a way as to be clearly visible from the rear:-
 - (a) during the period between half an hour before sunrise and half an hour after sunset, a red flag of dimensions not less than 0.6 metres by 0.6 metres; and
 - (b) **at other times, a lamp in addition to the prescribed lamps on the vehicle, so arranged as to show a red light to the rear.”**

Since the accident took place in the mid-night at about 9.30 p.m and admittedly, the precaution as contemplated under Rule 423 (iii) (b) of the Rules was violated and that resulted in the accidental death of the deceased.

The other contention of the insurance company is that the driver of the DCM van has no valid licence and in spite of there being legal notices which are marked as EXs.B3 to B8, the owner of the vehicle has not produced the licence and therefore, the owner of the vehicle violated the terms and conditions of the policy and hence the insurance company is not

liable to pay any compensation. In Ex.A6-M.V.I.Report, which was prepared by the Motor Vehicle Inspector, there is specific mention that the driver of the DCM vehicle is having licence bearing DL No.1177/04/191-2007. Therefore, it cannot be said that the driver of the offending vehicle has no valid driving licence at the relevant point of time.

The learned counsel for the insurance company further submits that the Tribunal erred in applying the multiplier '17' instead of '16', which is applicable to a person aged about 32 years. This submission needs to be considered for the reason that as per the settled legal position, for a person aged 32 years, the proper multiplier is '16' but not '17', as has been taken by the Tribunal. If the said multiplier is applied, the compensation would work out at Rs.3,84,000/- (Rs.36,000/- x $16 - \frac{1}{3}^{\text{rd}}$ therefrom). In addition to the said amount, an amount of Rs.33,500/- can be awarded towards funeral expenses, loss of consortium, love and affection and estate, which all makes the total compensation of Rs.4,17,500/-. Even if the multiplier '16' is adopted, the claimants are entitled to compensation what the Tribunal awarded, which cannot be in any way said to be excessive and exorbitant.

In so far as the appeal of the claimants is concerned, it is submitted that the Tribunal ought to have taken into consideration the fact that the deceased was a centering maistry and according to PW 3, the deceased was earning Rs.6,000/- per month, but the Tribunal erred in disbelieving the evidence of PW 3 with whom the deceased is said to have been working at the relevant point of time. Upon perusing the evidence of PW 3, I find that there is no satisfactory evidence to arrive at the conclusion that the deceased was earning Rs.6,000/- by the time of accident. The Tribunal has rightly

disbelieved the testimony of PW 3 and rightly taken the notional income of the deceased as Rs.3,000/- per month and determined the compensation.

The learned counsel for the claimants submits that more amount has to be awarded under the heads of consortium, loss of love and affection and towards funeral expenses and in support of his contention, he placed reliance on the decision of the Supreme Court in *Minu Rout and another v. Satya Pradyumna Mohapatra*² and *Bhogireddi Varalakshmi v. Mani Muthupandi*³. As seen from the above decisions, there is no hard and fast rule in granting consortium. In *Bhogireddi* case (3 supra), the Supreme Court granted consortium considering the future prospects and age of the deceased. In *Minu Rout* case (2 supra) the Supreme Court granted Rs.50,000/- towards funeral expenses and sudhi ceremonies and towards love and affection.

As there is no hard and fast rule in awarding amount towards consortium & loss of love and affection, grant of Rs.33,5000/- under the heads consortium, love of affection and towards funeral expenses cannot be in any way said to be deficient.

For the foregoing reasons, I see no merit in either of the two appeals and they are accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 21.06.2017
Dsr

² 2013 (6) ALD 115 (SC)

³ (2017) 3 SCC 802