

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

M.A.C.M.A.Nos.1164/ 2010, 4412/ 2012, 1260/ 2010 &
1366/ 2012

COMMON JUDGMENT:

Two appeals viz., MACMA Nos.1164/2010 and 4412/2012 arise out of award passed in M.V.O.P.No.651/2006, two appeals viz., MACMA Nos.1260/2010 and 1366/2012 arise out of award passed in M.V.O.P.No.541/2006, both the awards are passed on 11.03.2010 by the Chairman, Additional Motor Vehicle Accident Claims Tribunal-cum-Judge, Family Court, Nellore.

The claimants in both the MVOPs filed claim petitions claiming compensation for the loss of deceased and for the injuries sustained in the accident that was occurred on 08.12.2005 at 2 a.m at Nelaballi cross road due to rash and negligent manner of the driver of offending lorry bearing registration No.AP-27-U-4578.

According to the claimants it is stated that on 08.12.2005 when the deceased Delhi Babu and two others were returning to Naidupet on a two wheeler from Srikalahasti at about 2 a.m. when they reached near Nelaballi cross road, the offending lorry, without giving any signal, suddenly stopped, due to which, the two wheeler of the deceased dashed on the rear side edge of the lorry, as a result, the deceased died and two others sustained injuries, for which, the legal heirs of the deceased filed MVOP No.651/2006 claiming compensation of Rs.4,00,000/-, against which, the Tribunal granted compensation of Rs.2,02,000/- with interest @7.5% per annum.

The injured persons filed MVOP.No.541/2006 claiming compensation of Rs.3,00,000/-, against which, the Tribunal granted compensation of Rs.1,97,000/- with interest @7.5% p.a.

The Insurance Company filed counters in both MVOPs before the Tribunal contending that there is no negligence on the part of the driver of the offending lorry and there is negligence on the part of the deceased and the injured persons. It is contended that the rider of the motor vehicle allowed two more persons to travel as pillion riders, violating the rules and the rider of the motor vehicle hit the stationed lorry on its back side and sustained injuries, for which, the driver of the offending lorry is not responsible and hence the Insurance Company is not liable to pay the awarded amount to the claimants.

Before the Tribunal, the claimants as well as the Insurance company adduced oral and documentary evidence. Upon considering the oral and documentary evidence, the Tribunal awarded the compensation, as stated supra.

Questioning the award, the Insurance company filed two appeals and other appeals are filed by the claimants seeking enhancement of compensation and rate of interest.

Upon perusal of the oral and documentary evidence on record, the facts that emerge are that on the fateful day, the lorry was parked on the road without proper indications and it being dead end of night, the deceased and injured, who were traveling on a two wheeler, dashed the lorry from behind, resulting in the death of one person and injuries to another. The investigation has established the negligence act on the part of the driver of the lorry in parking the lorry without taking adequate precautions.

The contention of the Insurance Company that the driver of the two wheeler is solely responsible or at least there is contributory negligence on his part has been disbelieved by the Tribunal for cogent and valid reasons. There is no evidence placed on record to show that the fact that three

persons were traveling on the two wheeler has, in any way, contributed to the unfortunate accident. Therefore, the Tribunal has fastened the liability on the Insurance Company and the owner of the lorry which cannot be said to be, in any way, erroneous.

With regard to the quantum of compensation, the Tribunal has taken into consideration the material on record and determined the income of the deceased and by applying the proper multiplier and allowing the permissible deductions, determined the compensation for death of the deceased at rs.2,02,000/- and rs.40,000/- for the injured. The said amount is determined on the basis of the evidence that is produced on behalf of the claim petitioners. No sufficient material has been produced to show that the claim petitioners are entitled to any amount other than that has been determined by the Tribunal. The amount of compensation awarded by the Tribunal for the claim petitioners for the death of the deceased and also the injured is based on proper appreciation of the evidence on record warranting no interference. In view of the above, there are no merits in the appeals preferred by both the Insurance Company as well as the claim petitioners. All the appeals are therefore liable to be dismissed.

In the result, all the appeals are dismissed. Miscellaneous petitions, if any, pending in these appeals, shall stand closed.

M.S.K.Jaiswal, J

7th June, 2017

Dsr/ smr