HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.745 of 2010
&
CROSS OBJECTIONS (SR) No.17226 of 2010

JUDGMENT:

This appeal is filed by the insurance company – 2nd respondent in M.V.O.P.No.229 of 2007, against the award dated 31.12.2009 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short "the Tribunal").

2. Being unsatisfied with the award passed by the Tribunal, the claimants filed cross objections seeking enhancement of compensation.

3. The respondents/claimants filed the claim petition claiming compensation of Rs.10,00,000/- on account of death of one B.Srinivas Reddy, who died in a motor accident that occurred on 19.02.2007. Claimants Nos.1 & 2 are the parents and Claimant No.3 is the brother of the deceased.

4. The brief facts of the case are that on 19.02.2007 at about 5 a.m. the deceased B.Srinivas Reddy was proceeding on TATA Mini Trolley, bearing registration No.AP36-W9082 from Narmeta towards Warangal Marketyard with the load of Cotton and Chilli bags and when reached near Rampur petrol Bunk, suddenly a Tractor Trolley, bearing registration No.AP36G1412 & AP36G4510 came in a rash and negligent manner at high speed and hit the Auto trolley of the deceased, due to which, the Auto Trolley turned turtle and the deceased sustained multiple injuries. On 20.02.2007 the deceased succumbed to injuries in Life Line Hospital, Warangal. The deceased was aged about 24 years, having studied B.Com, B.Ed and was working as private teacher and earning Rs.6,000/- per month by the time of accident.

5. The appellant/Insurance Company filed the counter denying the averments of the claim petition and its liability. It is further contended that

the driver of the offending vehicle was not having valid licence at the time of accident and that the owner of the offending vehicle had violated the terms and conditions of the policy by entrusting the vehicle to a person who was not having any valid licence. It is further contended that the claim made by the claimants is excessive and exorbitant.

6. On behalf of the claimants, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.18 and Exs.X1 & X2. On behalf of the respondents, RWs.1 & 2 were examined and Exs.B1 & B2 were marked.

7. The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.6,04,000/- as against the claim of Rs.10,00,000/-. Questioning the said award, the appellant-Insurance Company filed this appeal.

8. The learned counsel for the appellant/insurance company submits that the Tribunal erred in holding that the accident was due to rashness and negligence on the part of the driver of the tractor-trailor, which is alleged to have hit the auto trolley, in which the deceased, PW 2 and two others were traveling. According to the learned counsel, the accident was due to the negligence on the part of the driver of the auto trolley and also the deceased since he was sitting by the side of the driver for which there is no provision. The learned counsel further submits that the Tribunal also erred in awarding the compensation without taking into consideration the proper multiplier and hence the appeal.

9. On the other hand, the learned counsel for the claimants submits that even though the appellant examined RW 2 who was driving the offending vehicle at the relevant time, nothing concrete is elicited from him for holding that the accident was due to contributory negligence on the part of the driver of the auto trolley or the deceased. It is further submitted that the insurance company though contended that the driver of the offending

vehicle had no driving licence, but nothing is elicited from him when he has been examined as RW 2 on being summoned by the insurance company. The learned counsel submits that out of the same accident two MVOPs arose and in the present MVOP there is a claim for death of Srinivas Reddy and for the injuries sustained by PW 2 herein, MVOP No.225/2007 was filed which was also decreed. The contentions that are now raised in the appeal and also in the MVOP No.225/2007 were also raised before the Tribunal and the Tribunal clearly held that there was no contributory negligence on the part of the driver of the auto trolley, that the accident took place due to rashness and negligence on the part of the driver of tractor-trailor, who was also examined as RW 2 in the present MVOP and that therefore, the insurance company cannot deny its liability to indemnify the respondents/insured. The learned counsel further submits that the Tribunal erred in awarding compensation without taking into consideration the bright academic background of the deceased who was double graduate and also secured merit rank for admission in the Master of Education and was also likely to be selected to the post of Lecturer conducted by APPSC. The learned counsel submits that the compensation awarded by the Tribunal is inadequate and therefore, the claimants filed cross objections claiming enhancement of compensation.

10. The points that arise for consideration are:

i. Whether the accident took place due to rashness and negligence on the part of the driver of the offending vehicle insured by the appellant or whether there was any contributory negligence;

ii. Whether the compensation awarded by the Tribunal is just and reasonable or needs enhancement.

Point No.(i):

11. RW 2 was the driver of the tractor trailor which was owned by the 4th respondent and insured by the appellant. There is no controversy with regard to the accident having taken place on 19.02.2007 and also the fact that in the said accident while the deceased Srinivas Reddy died, PW 2 sustained injuries. The contentions of the appellant is that the accident was not due to the negligence on the part of RW 2 who was driving the insured vehicle at the relevant time, but both the driver of the auto trolley and the deceased have contributed to the accident. It is also on record that at the relevant time while PW 2 and others were traveling in the auto trolley, the deceased was sitting beside the driver, and in a closed cabin the deceased and the driver were traveling.

12. On behalf of the insurance company and in support of its contention, the driver of the insured vehicle, RW 2, has been summoned and examined. Even though he denied that the accident was due to negligence on his part, but he categorically admitted that his tractor trailor was loaded with wooden logs and one of the wooden log hit the auto trolley. He further admitted that though he was proceeding slowly on the road towards left side, there was a ditch and in order to avoid the ditch, he swerved the vehicle towards right side without noticing the auto trolley coming behind and in that process, the wooden log hit the auto trolley and it turned turtle. The evidence of RW 2, if carefully analyzed, clearly shows that the accident was due to negligent driving by RW 2 who was even prosecuted by the jurisdictional police for such act.

13. The learned counsel for the appellant submits that there was also contributory negligence on the part of the deceased in his act of sitting beside the driver of the auto trolley in the cabin for which there was no provision.

14. As already stated, out of the same accident, two MVOPs arose. While the present MVOP is for the death of the deceased, MVOP No.225/2007 is for the injuries sustained by PW 2. The insurance company raised same contentions in both the MVOPs and led same evidence. On the same day, i.e. on 31.12.2009, the Tribunal disposed of both the MVOPs holding that the accident was due to negligence on the part of the driver of the tractor trailor, which was insured with the appellant and there was no contributory negligence. While the insurance company challenges the award in the present MVOP, admittedly no appeal is preferred against the order and decree in MVOP.No.225/2007, in spite of there being categorical findings that the accident was due to rashness and negligence on the part of the driver of the tractor trailor and that there was no contributory negligence on the part of the driver of the auto trolley. When findings of the Tribunal became final in one MVOP, the same cannot be agitated in another MVOP by filing appeal.

15. The learned counsel for the insurance company submitted that the appellant did not prefer appeal in another MVOP, but preferred appeal against the order in the present MVOP. There is distinction between two cases, according to the learned counsel, while the injured who claimed compensation in MVOP.225/2007 was sitting in the auto trolley, the deceased whose death is subject matter of the present appeal and MVOP was sitting beside the driver and hence the deceased has contributed to the negligence.

16. Upon carefully perusing the evidence on record, I see no force in this submission of the learned counsel, for the reason that the manner in which the accident took place does not give any scope for inferring that the deceased by his act of sitting beside the driver has in any way contributed to the accident. Had it been an open cabin and the deceased himself after the impact lost balance and fell down, probably it could have been said that the act of the deceased in sitting beside the driver is cause for falling down,

sustaining injuries and succumbing thereto. In the instant case, the deceased and the driver of the auto trolly were sitting in a closed cabin and the auto trolley turned turtle and fell down. In that view of the matter, it does not make any difference if the deceased was sitting in the cabin or in the trolley. Therefore, I have no hesitation in holding that neither the deceased nor driver of the auto trolley in any way contributed to the accident which resulted in the death of the deceased and injuries to PW 2.

17. The learned counsel for the appellant submitted that the driver of the tractor trailor which was insured by the appellant insurance company was not possessing the driving licence to drive the tractor trailor and hence the insurance company cannot be made liable to indemnify the owner since he has handed over the tractor trailor to a person who was not authorized to drive the vehicle. This submission of the learned counsel is also devoid of substance for the reason that when the driver of the tractor trailor has been summoned and examined by the insurance company as RW 2, not even a single sentence is elicited from him in so far as this contention about non-possession of driving licence is concerned. When RW 2 was in the witness box and if really the driver has no driving licence as contended by the insurance company, the said aspect has to be put to RW 2 and could have explained whether he has any licence or he did not have even any licence, therefore this contention is also liable to be rejected.

18. In view of the foregoing discussion, it is held that the Tribunal has rightly held that the accident was due to rashness and negligence on the part of the driver of the tractor trailor, there was no contributory negligence either on the part of the driver of the auto trolley or on the part of the deceased, and therefore, both the owner of the offending vehicle and the insurance company are liable to pay the compensation jointly and severally. Point No.(i) is accordingly answered.

Point No.(ii):

19. Insofar as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.6,04,000/- and not being satisfied with that, the claimants filed Cross-Objections bearing SR No.17226/2011 claiming compensation of Rs.12,00,000/- The evidence on record shows that the deceased who was a highly qualified person having did his B.Com., B.Ed., and was aged about 24 years, was working as a teacher and there were prospects of his becoming a Junior Lecturer and would have earned substantial amounts. Learned Counsel appearing for the claimants submits that the Tribunal has erred in not taking into consideration the income of the deceased properly and erred in awarding a compensation of Rs.6,04,000/- which needs to be enhanced.

20. Upon carefully perusing the oral and documentary evidence on record, what is noticed is that the compensation awarded by the Tribunal needs to be interfered with insofar as the loss of dependency is concerned. The Tribunal has not taken into consideration the oral and documentary evidence and fixed the monthly income of the deceased at Rs.4,000/- and by applying the multiplier '17' and deducting $1/3^{rd}$, fixed the compensation for the loss of dependency at Rs.5,44,000/-. Even if the monthly income is notionally fixed by the Tribunal at Rs.4,000/-, the claimants are entitled to some additional amounts in view of the fact that the deceased was a young double graduate with a bright future prospects. Therefore, 50% of the present earnings needs to be added towards future prospects. The Tribunal deducted $1/3^{rd}$ towards the personal living expenses of the deceased, which is not proper since the deceased was a bachelor and therefore half of his income has to be deducted towards his personal living expenses. In the case of unmarried persons, his age is required to be considered and therefore '17'

is the proper multiplier which needs to be adopted. Therefore, the loss of dependency is worked out as under:-

21. Monthly income of the deceased is fixed at Rs.4,000/-. Since the deceased was a bachelor, 50% of the income has to be deducted towards the personal expenses and therefore, the loss of dependency comes to Rs.2,000/-. The annual income comes to Rs.24,000/-. By applying the multiplier '17', it comes to Rs.24,000/- x 17 = Rs.4,08,000/-. In addition to that, 50% of the future prospects comes to Rs.2,04,000/-. The total loss of dependency works out to Rs.6,12,000/- as against Rs.5,44,000/- determined by the Tribunal. Insofar as the grant of compensation for loss of estate at Rs.25,000/-, medical expenses of Rs.25,000/- and funeral expenses of Rs.10,000/- is just and reasonable which do not warrant any interference. Therefore, the total compensation that can be awarded to the claimants is Rs.6,72,000/-. Point No.2 is accordingly answered.

22. In the result, MACMA is dismissed and the Cross Objections are allowed in part, to the extent, as indicated above. The total compensation payable by the appellant/insurance company and the 4th respondent/owner of the offending vehicle jointly and severally is determined at Rs.6,72,000/-, instead of Rs.6,04,000/- awarded by the Tribunal, together with proportionate costs and interest and the apportionment shall be as ordered by the Tribunal with proportionate increase in their shares in view of the enhancement.

M.S.K.JAISWAL, J

Date: August, 2017
Dsr/smr