

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 812 OF 2010

JUDGMENT:

This is an appeal by M/s.The New India Assurance Company Limited.

2. This appeal is arising out of the order, dated 16.12.2009, in M.V.O.P. No.417 of 2009, on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Guntur (for short, the Tribunal).

3. Appellant herein is the second respondent in M.V.O.P.No.417 of 2009. The said MVOP was filed by mother, wife and son of the deceased, claiming compensation of Rs.8,10,000/- on account of his death in a motor vehicle accident.

4. The appellant is the insurer, respondent Nos.1 to 3 are the claimants and respondent No.4 is the owner of offending motorcycle. For the sake of convenience, the parties shall be referred to as they are arrayed before the Tribunal.

5. The brief facts of the case are that, on 10.02.2009 at about 01:30 p.m., while the deceased Ala Veera Brahman, who was riding the motorcycle bearing No.AP 07AD 7020, along with his brother-in-law Adusumalli Poornachandra Rao, who was a pillion rider, were proceeding to Narakoduru to attend a meeting of Praja Rajyam Party, and when they

reached near the stone quarry of Vadlamudi, the motorcycle of the first respondent bearing No.AP 07AL 0913, being driven by its driver at a high speed in a rash and negligent manner, came from their behind and dashed the motorcycle, in which Ala Veera Brahman was travelling. In the accident, the deceased and Adusumulli Poornachandra Rao fell down, received injuries and died on the spot. Chebrole Police registered a case against the driver of the offending motorcycle for the offence under Section 304-A I.P.C. and investigated into the same. The first petitioner, being wife, the second petitioner, being father, and third petitioner, being mother of the deceased, filed said MVOP before the Tribunal under Sections 140 and 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.8,10,000/- for the untimely death of Ala Veera Brahman.

6. First respondent, owner of the offending motorcycle, remained *ex parte* before the Tribunal.

7. Second respondent, insurer of the offending motorcycle, filed written statement denying the claim of the petitioners.

8. The Tribunal, after framing the issues, and on consideration of the pleadings and evidence of the witnesses PWs.1 and 2 and the documents Exs.A-1 to A-7, passed the Award granting compensation of Rs.6,83,000/- with proportionate costs and interest at the rate of 7% p.a. from

the date of petition till realization making both the respondents jointly and severally liable to pay the compensation.

9. Aggrieved by the quantum of compensation awarded by the Tribunal, second respondent-insurance company preferred the instant appeal mainly on two grounds; firstly, that there is contributory negligence on the part of the deceased and secondly, that the compensation awarded by the Tribunal is highly excessive and is not in accordance with the provisions of Section 163-A of the Act and sought for setting-aside the impugned order.

10. Heard Ms. I. Maamu Vani, learned standing counsel for the appellant-insurance company, Sri Ch. Ravindra Babu, learned counsel for the respondents 1 to 3. None entered appearance on behalf of the fourth respondent.

11. The points that arise for consideration in this matter are:

- i) Whether there is any contributory negligence on the part of deceased?
- ii) Whether the compensation awarded by the Tribunal is excessive?
- iii) Whether there are sufficient grounds for setting-aside the impugned order?

All the 3 points go together:

12. Learned counsel for the appellant submitted that the Tribunal ought to have seen that the petition under Section 163-A of the Act was maintainable in respect of persons having income below Rs.40,000/- per annum. It is further contended that there is contributory negligence as three persons traveling on the motorcycle at the time of accident. It is appropriate to refer to Section 163-A of the Act to make things clear about proof of rash and negligent act, which reads as under:

“163-A: Special provisions as to payment of compensation on a structured formula basis:-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation:- For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

13. In a claim under Section 163-A of the Act, the claimant shall not be required to plead and establish that the death or

permanent disability occurred due to any wrongful act or neglect or default of the owner of the vehicle or any person. In view of the provision under Section 163-A(2), the claimant or the owner need not prove that there is negligence. Therefore, In view of the provisions of Section 163-A referred above, it is obvious that there is no force in the contention raised by the learned counsel for the insurer in respect of contributory negligence.

14. As far as the other contention of insurer is concerned about limit of income of Rs.40,000/- under Section 163-A, it is only a guidance and not as a sole basis. It was held in **APSRTC v. Divakala Vasundara**¹ that “where annual income exceeds Rs.40,000/- schedule under Section 163-A can be used as a guidance, but not as a sole basis, whether the claim is under Section 163-A or Section 166”. In the instant case, the annual income of the claimant was taken as Rs.36,000/-, and since the provision under Section 163-A of the Act is already a guidance and not a sole basis, there is no violation of provision under Section 163-A of the Act.

15. It also submitted that the deceased was negligent as he contributed to the accident by traveling on a motorcycle along with 2 others which was beyond the permitted capacity. It is further contended that there was no negligence on the part of

¹ 2007 (1) ALD 476

the driver of the crime vehicle and therefore, the insurer is not vicariously liable on behalf of the owner of the vehicle.

16. As far as this contention is concerned, there is no specific evidence brought on record to show that carrying three persons contributed to the negligence in riding the motorcycle, which led to the accident. It appears that this aspect was not brought to the notice of the Tribunal, perhaps due to not taking such a plea in the written statement filed by the insurance company. In view of lack of specific pleading on this aspect, there cannot be any finding.

17. As a matter of fact, though P.W.1 has stated that the income of the deceased was Rs.15,000/- per month, the Tribunal has taken the income of the deceased as Rs.3,000/- per month, as the deceased was an agriculturist, and applied the multiplier of 18 as per II-Schedule to Section 163-A of the Act and awarded loss of dependency at Rs.6,48,000/-. The Tribunal, apart from granting loss of dependency of Rs.6,48,000/-, has also awarded Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation and funeral expenses.

18. As far as the quantum of compensation is concerned, the Tribunal has awarded just and reasonable compensation which does not require any interference. Therefore, there is no need to interfere with the findings of the Tribunal in

awarding the amount of compensation. There are no merits in the appeal and therefore the appeal is liable to be dismissed.

19. In the result, the appeal is dismissed. The award dated 16.12.2009 in M.V.O.P.No.417 of 2009 passed by the Tribunal is confirmed.

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

Date: .02.2017.
TJMR

G. SHYAM PRASAD, J

