

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 2232 OF 2006

JUDGMENT:

1. This Appeal is arising out of the award, dated 26.06.2005, in O.P. No.3 of 2005, on the file the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Il Additional District Judge Karimnagar at Jagtial (for short, 'the Tribunal').

2. Appellant herein is the 4th respondent-insurance company, respondents 1 to 4 herein are the petitioners, 5th respondent herein is the driver and 6th respondent is the owner of Suzuki motorcycle bearing No.AP 15J 3705 and 7th respondent herein is the owner of Suzuki motorcycle bearing No.AP 15J 7585.

3. For convenience of reference, the ranks given to the parties before the Tribunal will be adopted throughout this judgment.

4. The brief facts of the case are that, on 28.07.2003 at about 01:00 p.m., while the deceased Koti Mohan, who was working as Clerk in Swetha Chicken Centre, Jagtial, belonging to 3rd respondent, went to Raikal for collecting business dues and while returning to Jagtial on Suzuki motorcycle bearing No. AP 15J 7585 and when he reached near Kompelli Bhoomaiah's lands in the outskirts of Kandlapalli village, 1st respondent came in his opposite direction by driving the Suzuki motorcycle bearing No.AP 15J 3705 in a rash and negligent manner, belonging to the 2nd respondent, and dashed against the motorcycle of the deceased. As a result of which, the said Koti Mohan sustained severe injuries and blood

oozed from his ears and nose and, while undergoing treatment in the Government Hospital, Jagtial, succumbed to the injuries. 1st petitioner, being the wife, 2nd and 3rd petitioners being the minor children, and 4th petitioner being mother of the deceased, filed the petition before the Tribunal under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.5,00,000/- for the untimely death of deceased in a motor vehicle accident.

5. 1st respondent filed counter denying the rash and negligent act on his part and contended that the deceased himself was rash in driving the motorcycle in a zigzag manner and caused the accident and as such there is no negligence on his part and prayed for dismissal of the petition.

6. 2nd and 3rd respondents remained *ex parte* before the Tribunal.

7. 4th respondent-insurance company, filed counter denying the material allegations of the petition *inter-alia* contending that the 1st and 2nd respondents being the driver and owner of Suzuki motorcycle bearing No.AP 15J 3705 alone are liable to pay the compensation as there is no negligence on the part of the deceased, who was driving the Suzuki motorcycle bearing No.AP 15J 7585, belonging to the 3rd respondent, which is insured with 4th respondent, and also disputing the age and income of the deceased prayed for dismissal of the petition.

8. The Tribunal, after framing the issues, and on consideration of the pleadings and evidence of the witnesses PWs.1 and 2 and RW.1, and the documents Exs.A-1 to A-8 and Ex.B-1, passed the Award granting compensation of Rs.3,50,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making the 3rd and 4th respondents jointly and severally liable to pay the compensation, while dismissing the claim against 1st and 2nd respondents.

9. Aggrieved by the quantum of compensation awarded by the Tribunal, 4th respondent-insurance company preferred the instant Appeal seeking to set-aside the award as the compensation awarded by the Tribunal is highly excessive and exorbitant.

10. Heard Mrs A. Malathi, learned standing counsel for the appellant-insurance company, Mr. Venkateswar Varanasi, learned counsel for the petitioners-respondents 1 to 4. None entered appearance on behalf of the 5th respondent. Appeal against 6th and 7th respondents was dismissed for default *vide* order of this Court on 05.07.2016.

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

- 1) Whether there is contributory negligence on the part of drivers of both the vehicles involved in the accident?
- 2) Whether the award passed by the Tribunal is illegal and perverse? If so, is it liable to be set-aside?

12. POINT Nos.1 and 2: Both the points go together. The only point that is raised by the learned counsel for the appellant in this Appeal is that there is no rash and negligence on the part of the deceased in driving the Suzuki motorcycle bearing No.AP 15J 7585. The Tribunal wrongly fixed the liability on the owner of the Suzuki motorcycle bearing No.AP 15J 7585. It is further submitted that the driver of Suzuki motorcycle bearing No.AP 15J 3705 has driven it in a rash and negligent manner and caused the accident. It is further submitted that the Tribunal did not even consider that there is any contributory negligence on the part of drivers of both the vehicles and erroneously fixed the liability only against the owner and insurer of Suzuki motorcycle bearing No.AP 15J 7585, being 3rd and 4th respondents. The contention of appellant in precise is that the Tribunal went wrong in deciding that there is no negligence on the part of the driver of Suzuki motorcycle bearing No.AP 15J 3705 and if at all any negligence is there in this case, the negligence is attributable to both the vehicles.

13. Learned counsel for the respondents-petitioners submits that as the Original Petition was filed under Section 163-A of the Act, there is no need on their behalf to prove the negligence on the part of the drivers of both the vehicles in view of the principle laid down by the Apex Court in *Harendra Nath Halder and others Vs. New India Assurance Company Limited and another*¹.

14. The Tribunal in Para 9 of its order has observed that the deceased is a third party to the vehicle bearing No.AP 15J 7585,

¹ 2006 ACJ 975

involved in the accident. 3rd respondent is the owner of the said vehicle and 4th respondent is its insurer. The trial Court placing reliance on a decision of the Apex Court in *Syed Ibrahim Vs. Union of India and another*², has arrived at a conclusion that the appellants being the third parties can recover damages from the 3rd and 4th respondents.

15. Learned counsel for the appellant contended that when it is a case of collision between two vehicles, there is contributory negligence and, therefore, owners of both the vehicles are liable to pay the compensation. Learned counsel for the appellant did not place any material or brought any proof of evidence for arriving at such conclusion that there is contributory negligence on the part of both the vehicles. Learned counsel for the appellant failed to bring to the notice of this Court any fact that there is negligence on the part of the driver of the Suzuki motorcycle bearing No.AP 15J 7585. Therefore, I do not see any valid ground in the contentions raised by the learned counsel for the appellant to hold that there is any contributory negligence in this case.

16. Learned counsel for the appellant further submits that the Tribunal has applied the multiplier 17, considering the age of the deceased in the group of 30 to 35 years, referring to the II Schedule of the Act but the Tribunal ought to have applied the multiplier 16, in view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*³.

² 2005 ACJ 588

³ 2009 (6) SCC 121

17. Learned counsel for the petitioners-respondents submits that the Tribunal has correctly applied the multiplier 17 referring to II Schedule of the Act for the age group of deceased around 30-35 years and there is no need to interfere with the order of the Tribunal. But, in view of the principle laid down by the Apex Court in *Sarla Verma*³, the multiplier applicable to the age group of deceased between 31 to 35 years is 16. The Tribunal has rightly taken the annual income of the deceased as Rs.20,000/-, after deducting 1/3rd towards his personal and living expenses, but erroneously applied the multiplier 17 instead of 16. If the notional annual income of Rs.20,000/- is multiplied with the relevant multiplier 16, the amount of compensation to be awarded under the head of loss of dependency would come to Rs.3,20,000/-. Insofar as the amount of compensation awarded by the Tribunal under the others head is not disputed by the appellant, there is no need to interfere with the same. Hence, the Appeal is partly allowed reducing the amount of compensation awarded by the Tribunal from Rs.3,50,000/- to Rs.3,30,000/-, keeping intact the rate of interest and other clauses in the impugned order as it is.

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

G. SHYAM PRASAD, J

Date: 18.01.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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