

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos. 1098 AND 1404 OF 2006

COMMON JUDGMENT:

Both the appeals arise out of the same order dated 06.02.2006 passed in M.A.T.O.P. No.47 of 2002 on the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Khammam (for short, 'the Tribunal').

2. M.A.C.M.A. No.1098 of 2006 is preferred by the appellants-petitioners in the aforesaid original petition, having got dissatisfied with the award of compensation of Rs.2,24,000/- with interest thereon at the rate of 7.5% per annum by the order dated 06.02.2006, as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') against respondent Nos.1 to 3, who are the driver, owner and insurer of the crime vehicle, for the death of one Kolanu Srinivasa Rao @ Srinivas (deceased) in a motor accident occurred on 20.10.2001.

3. Whereas, M.A.C.M.A. No.1404 of 2006 is preferred by the United India Insurance Company Limited, represented by its Branch Manager, Kothagudem, Khammam District, who is respondent No.3 in the aforesaid petition, aggrieved by the same order passed by the Tribunal.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

5. The facts would show that on 19.10.2001, the deceased was travelling in mini van bearing registration No.AP 20T 3908 along with empty tins and trays for packing fish at Eluru and bring the fish to Kothagudem and on the way, near Lingapalem village at about 3-30 a.m. on 20.10.2001, since the driver of the said mini van drove the same in a rash and negligent manner at high speed, lost control over the same, as a result of which, the mini van dashed against the road side mango tree, turned turtle and it fell into the paddy fields by the side of road margin, due to which, the K.Srinivasa Rao sustained fatal injuries and died at 4-30 a.m. in Chinthalapudi Hospital. A case was registered in Crime No.42 of 2001 by Dharmajiguda Police for the offence punishable under Section 304-A IPC against respondent No.1, who is the driver of the said mini van. The petitioners stated in the claim petition that the deceased was doing business in transportation and selling fish and earning Rs.8,000/- per month and contributing the same to the family and therefore, they sought a sum of Rs.5,00,000/- as compensation from respondent Nos.1 to 3, who are the driver, owner and insurer of the crime vehicle.

6. Respondent Nos.1 and 2, who are the driver and owner of the crime vehicle, remained *ex parte* before the Tribunal.

7. Respondent No.3-insurer of the accident vehicle filed counter before the Tribunal denying all the averments mentioned in the petition including the manner of accident, age and income of the deceased, etc.

8. The Tribunal after considering the evidence of P.W.1 and R.W.1 and the documents Exs.A.1 to A.4 and Ex.B.1, determined compensation as Rs.2,24,000/- and granted the same with interest at the rate of 7.5% per annum from the date of petition till realisation, fixing liability on all the respondents.

9. Heard the learned counsel for the petitioners, who are the appellants in M.A.C.M.A. No.1098 of 2006 and respondent Nos.1 to 6 in M.A.C.M.A. No.1404 of 2006, and the learned Standing Counsel for respondent No.3-insurer, who is the appellant in M.A.C.M.A. No.1404 of 2006 and respondent No.3 in M.A.C.M.A. No.1098 of 2006, apart from perusing the material available on record. It is stated in the cause title of grounds of appeal in M.A.C.M.A. No.1098 of 2006, the driver and owner, who are respondent Nos.1 and 2, are not necessary parties in this appeal. It is also stated in the cause title of the grounds of appeal in M.A.C.M.A. No.1404 of 2006 that respondent No.7 (driver of the crime vehicle) is not necessary party in this appeal. M.A.C.M.A. No.1404 of 2006 was dismissed for default on 28.06.2016 against respondent No.8-owner of the crime vehicle.

10. Learned counsel for the petitioners would submit that the deceased was travelling by the mini van with fish tins, as owner of the goods, therefore the insurer is liable to pay compensation; the compensation granted by the Tribunal is meagre; the Tribunal has taken Rs.1,500/- as monthly income of the deceased, deducted 1/3rd therefrom towards personal living expenses of the deceased

and further, the Tribunal has not granted compensation on other counts, i.e., loss of care, guidance, love and affection, etc.; and finally, prayed to enhance the compensation from Rs.2,24,000/- to Rs.5,00,000/- as claimed by the petitioners.

11. On the other hand, learned counsel for respondent No.3-insurer contended that the deceased was paid passenger and he was not carrying goods at the time of the accident; the Tribunal has not properly appreciated the evidence on record and came to an erroneous conclusion that the deceased was the owner of the goods; and ultimately, prayed to set aside the award passed by the Tribunal against respondent No.3-insurer.

12. In view of the submissions made by both sides, the points that arise for determination are:

- (1) Whether respondent No.3-insurer is liable to pay compensation to the petitioners?
- (2) Whether the petitioners are entitled for enhancement of compensation as claimed?

13. Point No.1: As far as the rashness and negligence on the part of the driver of mini van is concerned, there is no much contest. The evidence of P.W.1-wife of the deceased reveals that on 19.10.2001 at about 10-30 p.m., her husband-K.Srinivasa Rao along with his brother and one S.Rajesh, who are skilled persons in packing fish into tins and trays, started to go to Eluru, West Godavari District, to bring fish for sale at Kothagudem, and they have engaged a mini van bearing No.AP 20T 3908 and loaded tins

and trays, etc., in the mini van; respondent No.1-driver of the mini van drove the van in a rash and negligent manner at high speed, due to which the van turned turtle at about 3-30 a.m. on 20.10.2001 at Lingampalem village on Chinthalapudi Road within Dharmajigudem police station limits, as a result of which, her husband suffered grievous injuries and succumbed to the injuries while taking treatment in Government Hospital, Chinthalapudi. In the cross-examination, she reiterated the same and denied that she was deposing false and also denied that her husband was travelling in the accident vehicle as a gratuitous passenger in goods carrying vehicle. In Ex.A.1-certified copy of F.I.R., it is specifically mentioned that the deceased was doing business in fish, started at Kothagudem in the mini van to go to Eluru to purchase fish at Eluru and he died due to the rash and negligent driving of the driver of the mini van, as deposed by P.W.1. It is also mentioned in the F.I.R. that the mini van was engaged by the deceased to transport fish from Kothagudem to go to Eluru and in that process to get the fish from Eluru, the deceased was travelling in the mini van and died due to the accident. The scene of panchanama and inquest report attached to Ex.A.1-certified copy of F.I.R. and Ex.A.4-certified copy of post-mortem certificate also reveals the same. As per Ex.A.3-certified copy of Motor Vehicles Inspector's report, there was no mechanical defect of the accident vehicle. The Tribunal has analysed the entire evidence on record and came to a conclusion that the deceased had engaged the mini van to transport fish from Kothagudem to Eluru and he was also carrying

empty tins and trays for that purpose. So in view of the specific evidence, it can be safely concluded that the deceased was the owner of the goods at the time of occurrence of the accident and death. No other opinion can be substituted. Further, there is no dispute with regard to the validity of insurance policy of the mini van under Ex.B.1. Accordingly, this point is answered.

14. Point No.2: So far as the compensation granted by the Tribunal is concerned, as seen from the entire evidence on record, it is very clear that the deceased was doing business in fish, i.e., purchasing and selling them. Though the petitioners claimed that the deceased was earning Rs.8,000/- per month from his business, they have not filed any evidence to substantiate the same. The Tribunal has taken Rs.1,500/- as monthly income of the deceased. It is evident from the manner of accident, it establishes the deceased was doing business in fish sale and purchase, it is an income generating occupation and as such, his monthly income can be taken as Rs.3,000/-. Since the accident and death occurred in the year 2001, the income of the deceased can be taken as Rs.3,000/- per month or Rs.36,000/- per annum. In view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹, since the dependents are six in number, 1/4th of the income has to be deducted towards personal living expenses of the deceased, which comes to Rs.9,000/- and when the same is deducted, the contribution of the deceased to the family comes to Rs.27,000/-. The suitable

¹ (2009) 6 SCC 121

multiplier for the age group of persons aged between 26 and 30 years, since the deceased was aged 30 years as per Ex.A.4-certified copy of post-mortem certificate, is '17' as per the decision of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1) and when the same is applied, loss of dependency comes to Rs.4,59,000/-. Besides the same, petitioner No.1 being the wife of the deceased is entitled to Rs.19,000/- towards loss of consortium and all the petitioners are entitled to Rs.22,000/- towards funeral expenses, loss of estate and loss love and affection. In all, the petitioners are entitled to Rs.5,00,000/- as compensation with interest at the rate of 7.5% per annum from the date of petition till realisation.

15. Accordingly, M.A.C.M.A. No.1098 of 2006, filed by the petitioners, is allowed modifying the order dated 06.02.2006 passed by the Tribunal, by enhancing the compensation from Rs.2,24,000/- to Rs.5,00,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. Petitioners Nos.1 to 4, who are wife and children of the deceased, are entitled to Rs.95,000/- each and petitioner Nos.5 and 6, who are the parents of the deceased, are entitled to Rs.60,000/- each. Petitioner Nos.1, 5 and 6 are permitted to withdraw their entire share amounts and petitioner Nos.2 to 4 are permitted to withdraw their entire share amounts after attaining the age of majority. The other terms of the order under challenge shall remain unchanged. M.A.C.M.A. No.1404 of 2006 filed by the insurer of the crime vehicle is

dismissed. There shall be no order as to costs. Miscellaneous
Petitions pending, if any, shall stand closed.

Date: 10.02.2017
siva

Dr. SHAMEEM AKTHER, J.

