

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A. C.M.A. No.1482 of 2010

JUDGMENT :

This Motor Accidents Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act by the appellant – 2nd respondent- M/s.United India Insurance Company Limited in M.V.O.P.No.55 of 2009 being aggrieved by the judgment and decree dated 6th May, 2010 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy, awarding compensation of Rs.20,00,000/- to the claimants in a case of death occurred in a motor vehicle accident.

(2) The claimants, who are the wife and two children of the deceased, have filed motor accident O.P. claiming compensation of Rs.20,00,000/- on account of death of the deceased.

(3) The brief facts of the case are that on 17.7.2008, the deceased along with one, Vijay Kumar proceeding on a scooter to go to his factory and when they reached near Saraswathi Sisu Mandir School on Sangareddy-Jogipeta Road, one school van bearing No.AP 23 V 7663 came at a high speed, driven in a rash and negligent manner, from opposite direction and dashed against the scooter. As a result of which, the deceased, who was sitting as a pillion rider on the scooter, fell down from the scooter and sustained injuries on his vital parts and died on the spot. The deceased was aged about 40 years and working as Manager in Rushi Distilleries Private Limited and he was getting a salary of Rs.20,000/- per month. Due to his sudden death, the petitioners have made a claim against respondent Nos.1 and 2, the owner and insurer of the crime vehicle. The respondent Nos.1 and 2 have filed separate counters denying their liability and also the quantum of compensation. It is contended on behalf of the

respondents that there was no negligence on the part of the driver of the van. The 1st respondent contended that the driver of the van was having valid driving licence and the van was insured with the 2nd respondent, as such the 2nd respondent is liable to pay compensation.

(4) The Tribunal, on consideration of the evidence, has awarded compensation of Rs.20,00,000/- on account of the death of deceased in the accident.

(5) Heard the arguments of the learned counsel for the appellant-insurer Sri Naresh Byrapaneni and the learned counsel for respondent Nos.1 to 3-claimants Sri C.V.Bhaskar Reddy, who appeared on behalf of Smt.B.V.Apparna Laxmi.

(6) The contention of the appellant-insurer is that the accident has occurred due to head on collision between scooter and the school van. There is contributory negligence on the part of the rider of the scooter. Therefore, the liability is to be apportioned between rider of scooter and the school van. The Tribunal erred in fixing the liability only against the van, though it is a case of head on collision.

(7) The learned counsel for respondent Nos.1 to 3-claimants submitted that P.W.2 was an eyewitness to the accident. According to him, on the date of accident he was going on his scooter and after crossing Sisu Mandir School on Sangareddy-Jogipeta Road, one school van bearing No.AP 23 V 7663, driven in a rash and negligent manner, came from his behind and dashed the scooter rod and went ahead of him and dashed another scooter, which is coming from opposite direction. As a result of which, the person on the scooter died on the spot. It is submitted that P.W.2 was an eyewitness to the accident and he clearly deposed about the rash and negligent act on the part of the driver of the school van.

(8) As a matter of fact, the Tribunal has discussed the evidence of P.W.2 clearly in the light of the cross-examination of this witness and came to the conclusion that the accident has occurred due to the rash and negligent driving of the driver of the school van. The observation of the trial Court is that nothing was elicited in the cross-examination of P.W.2 to disbelieve his version in the chief-examination. No doubt, it is a case of head on collision, but P.W.2, who is an eyewitness, has clearly deposed that the driver of the van driven in a rash and negligent manner. It is obvious that the driver of the van had dashed against the scooter rod and dome of P.W.2, and it went ahead and dashed against the scooter which was coming in the opposite direction, in which the deceased was traveling. Therefore, I do not see any valid ground to interfere with the finding of the tribunal with regard to the fixing of liability against the driver of the van with regard to his rash and negligent driving. The plea of the appellant-insurer is that, since it is a case of head on collision there is contributory negligence; This plea of contributory negligence cannot be accepted in the light of the evidence of P.W.2 in this case. Therefore, I do not find any valid ground to interfere with the findings of the Tribunal in this regard.

(9) The other contention of the appellant-insurer is that the owner and insurer of the scooter are not made as parties in this petition, as such the petition is bad for non-joinder of necessary parties.

(10) The question of adding the owner and insurer of the scooter does not arise in this case as the Tribunal has already fixed the liability against the driver of the commercial vehicle, the school van. Therefore, the petition is not bad for non-joinder of owner and insurer of the scooter. They are not necessary parties in view of the findings of the tribunal in this regard.

(11) It is further contended by the learned counsel for the appellant-insurer that the tribunal has awarded excessive compensation basing on salary

certificate - Ex.A6 and the deposition of P.W.3 a self-styled Manager of the alleged employer of the deceased. It is further submitted that P.W.3 has not produced any authorization to give evidence in the Court on behalf of his employer and therefore, the document produced by P.W.3, which is Ex.A6, has to be rejected.

(12) The learned counsel for respondent Nos.1 to 3-claimants contended that P.W.3 is the Manager of Human Resources, working in Rushi Distilleries Private Limited in which the deceased was working as a Manager and was drawing a salary of Rs.20,000/- per month. The Tribunal has rightly considered the evidence of P.W.3 and placing reliance on the salary certificate - Ex.A6, and taken the salary of the deceased as Rs.18,290/- for assessment of compensation. Therefore, no interference is required with regard to award of compensation by the Tribunal.

(13) It is pertinent to note that in issue No.2 the Tribunal has clearly discussed about evidence of P.W.3, the Manager of Rushi Distilleries Private Limited, who deposed that the deceased was earning Rs.20,000/- per month. P.W.3 has also deposed that the deceased earlier worked in Nizam Sugars Limited and Karnataka Breweries and Distilleries Private Limited, Bangalore and he filed Ex.A6 – Salary Certificate, which shows that the deceased was earning Rs.18,290/- per month. The Tribunal has rightly considered the evidence of P.W.3, the Manager H.R. working in Rushi Distilleries Private Limited and placed reliance on Ex.A6 in proof of the salary received by the deceased.

(14) The contention of the appellant-insurer that is P.W.3 was not having authorization to give evidence in this case, does not make the evidence of P.W.3 untrustworthy. P.W.3 is an independent witness and he stated clearly that the deceased was working as Manager and getting salary of Rs.20,000/- per month prior to his death. P.W.3 also filed a certificate – Ex.A6 to show that he had

worked earlier in Nizam Sugars Limited and Karnataka Breweries and Distilleries Private Limited, Bangalore. The appellant-insurer did not take any steps to disprove the certificate Ex.A6 as a false or fabricated document and the deceased was not earning Rs.18,290/-. The appellant-insurer did not take any steps to demolish the evidence of P.W.3, who was an independent witness working as Manager in Rushi Distilleries Private Limited. There is no evidence on record to show that he was not working as Manager in Rushi Distilleries Private Limited. Therefore, the Tribunal has rightly placed reliance on the evidence of P.W.3 and came to the conclusion that the deceased was earning Rs.18,290/- and calculated compensation. Therefore, I do not see any valid grounds to interfere with the findings of the Tribunal in assessing the loss of dependency in this case.

(15) The contention of the appellant-insurer is that the Tribunal has awarded interest at 8% per annum, which is highly excessive and therefore it has to be scaled down to 6% per annum. As far as this request is concerned, it is pertinent to note that in the cases of *Dharampal and others Vs. U.P. State Road Transport Corporation*¹ and *Reshma Kumari v. Madan Mohan*² the Hon'ble Apex Court while dealing with the cases of similar nature, awarded the rate of interest at 7.5%, which was considered to be reasonable. Therefore, keeping in view the ratio laid down in *Dharampal's case* and *Reshma Kumari's case* (supra) the rate of interest awarded by the Tribunal is reduced from 8% to 7.5% per annum. On consideration of the evidence on record, except scaling down the rate of interest from 8% to 7.5%, I do not see any valid ground to interfere with the award passed by the Tribunal.

¹ MANU/SC/7680/2008

² (2013) 9 SCC 65

(16) In the result, the appeal is partly allowed by modifying the award only to the extent of reducing the rate of interest from 8% to 7.5% per annum and the rest of the award is confirmed. No order as to costs.

(17) Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

GUDI SEVA SHYAM PRASAD, J.

March, 2017
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