

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.1821 of 2009

Date:17-03-2017

Between:

United India Insurance Company Ltd.,
Rep by the Divisional manager, D.O.,
Railway Station Road,
Kurnool.

... Petitioner.

And

Smt. Pramila Bai and others.

... Respondents



THE HON'BLE SRI JUSTICE N. BALAYOGI**MACMA No.1821 of 2009****JUDGMENT:**

The appellant, aggrieved by the order passed by the Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar in O.P.No.97 of 2006, dated 09-01-2009, preferred this appeal on the ground that the trial Court erred in awarding compensation since a lorry bearing No.AP 21T 4595 did not involve in the accident and since Balaji died due to dash given by a unknown vehicle even as per the complaint.

Further on the ground that the police, owner of the lorry bearing No.AP 21 T 4595 and his driver in collusion, planted the said lorry to claim compensation against the appellant. In view of the clear evidence of P.W.2 that he had no idea about the number of the lorry.

Further contended that the Tribunal erred in applying the multiplier '11' when the income of the deceased more than Rs.40,000/-. The relevant multiplier is 4.27% as per Bhagwandas case. The award is suffered infirmities warranting interference in the appeal.

Heard the learned counsel for the appellant-Insurance Company and learned counsel for the respondents.

The main contention of the appellant-Insurance Company is that the lorry was planted in collusion with the owner, driver of the said lorry to help the claimants for more compensation as they belong to the same village. The first respondent, who is the none other than wife of the deceased-Balaji was examined as P.W.1 besides examined Wanaparathi Sathaiah, a direct witness to the accident as P.W.2 to

prove the rash and negligent driving and involvement of the lorry bearing No.AP 21T 4595. Admittedly, P.W.1 is not a direct eye-witness to the accident. Necessarily relying on the evidence of Wanaparthi Sathaia, who is the direct/eye-witness to the accident.

In the decision of this Court reported in ***United India Insurance Company Limited vs. Sangareddy Town, Medak District v. G. Mallaiah and others***¹ wherein it was held as follows:-

“Raghunandh P.W.3 was also not immediately examined. Nobody indicated about the involvement of the said Tractor earlier in the complaint, which was given immediately after the accident and the inquest panchanama, scene of offence of panchanama and the post-mortem report were also conducted immediately on the date of complaint itself. Nowhere the involvement of the Tractor in question was stated by any of the witnesses including P.W.3, who is an eye witness to the accident. There is no damage to the tractor also.

In view of the aforesaid facts and circumstances, this Court held that the said tractor was not involved in the accident and the accident was not occurred due to rash and negligent driving of the driver of the tractor, who is said to have voluntarily produced by the owner of the tractor before the police 20 days after the accident. The tractor and trailer was planted in collusion with the police. The sub-inspector of police also filed a charge sheet contra to the records in collusion with owner of the said tractor.”

In the case on hand, the evidence of P.W.2 is consistent and inspired confidence who in the evidence affidavit specifically stated that on 21-05-2005 at 6:00 A.M., while he was proceeding to the outskirts of village to answer calls of nature, at the time one K. Balaji was proceeding on his bicycle by the side of road on NH7 to answer

¹ 2010 (6) ALD 13

calls of nature in the outskirts of the village. Meanwhile, the lorry bearing No.AP 21T 4595 driven by its driver namely Syed Rahman, who is known to him, with high speed in a rash and negligent manner, came from Rajapur side proceeding towards Shadnagar, Hyderabad and hit to bicycle of K. Balaji causing grievous injuries to him and succumbed to injuries, while shifting to Shadnagar Hospital. P.W.2 was cross-examined at length and he admits that the owner and driver of the crime lorry belong to his village. He witnessed the accident from very near at that time he himself and one Mahmood were present at the accident spot. He further stated during cross-examination that he has no idea about the number of the lorry. The only suggestion to P.W.2 is that he is deposing falsehood to help the petitioners as they are belong to his village. There is nothing suggested to P.W.2 to speak against the owner and driver of the lorry bearing No.AP 21T 4595 involved in the accident.

The owner of the lorry who is the first respondent was examined as R.W.1, who deposed that on 21-05-2005, the driver of his lorry informed about involvement of the lorry bearing No.AP. 21T 4595 in accident. During cross-examination, he admits that his driver informed him over a telephone about the involvement of the lorry in accident.

Ex.A1 is the First Information Report and Ex.A4 is the inquest report, wherein it was specifically mentioned that some unknown vehicle driver drove the vehicle with high speed in a rash and negligent manner and dashed the deceased-Balaji, who was proceeding on his motor cycle. The investigating officer, after thorough investigation, filed a charge sheet under Ex.A2 against the driver of the lorry bearing No. AP 21T 4595, wherein he specifically

stated that on 02-06-2005, Sri M. Fazlur Rahman, whom P.W.2 referred as an eye-witness to the accident along with him examined and recorded his statement, wherein they stated that on 21-05-2005 at 6:00 hours, the driver of the lorry bearing No.A.P. 21T 4595 drove the vehicle in a rash and negligent manner and dashed K. Balaji, who succumbed to injuries. The inquestdars under Ex.A4-inquest report also recorded that a unknown vehicle driver caused the accident.

The Motor Vehicle Inspector, who inspected the lorry bearing No.AP 21T 4595 recorded against column "10 (a) & (b)' as *"No hydraulic fluid leakage from brake system and no mechanical defects."*

In the facts discussed above, I find that on 21-05-2005 at 6:00 hours, the driver of the lorry bearing No.AP 21T 4595 drove the lorry with high speed in a rash and negligent manner and dashed the bicycle fiddled by the deceased, who succumbed to injuries while shifting to the hospital. Absolutely, there is no iota of the evidence for the Investigating Officer to plant the lorry. In the case relied on by the Insurance Company, the complainant during cross-examination admitted that he has stated in the complaint that some unknown lorry caused the accident, but whereas the vehicle involved in the said case was tractor and trailer. Nobody indicated about the involvement of the said tractor and trailer in the complaint. In the inquest report as well as in Ex.A1-FIR stated that unknown vehicle driver caused the accident. Therefore, there is a contradictory statement in the FIR and evidence of the witnesses in the case relied on by the appellant, wherein the complainant stated that the lorry involved in the accident, whereas in the charge sheet, it was mentioned that the vehicle involved in the accident is a tractor &

trailer. Further, in the instant case, during investigation, the Sub-Inspector of Police recorded the statement of the witnesses who stated the lorry number as AP 21T 4595 and accordingly, the charge sheet was filed against the driver of the lorry and offending lorry bearing No.AP 21T 4595. There is nothing to suspect the charge sheet or disbelieve the evidence of P.W.2 and the evidence on record is consistent and bare suspicion in the absence of any rebuttal evidence I find that the trial Court rightly appreciated the evidence on record marshalling facts came to the right conclusion that the driver of the lorry bearing No.AP 21T 4595 drove the lorry in a rash and negligent manner and caused the accident resulting the death of Balaji who is the husband of P.W.1 and such findings are legal and valid.

With regard to the age, occupation and income of the deceased, there is the evidence of P.W.1 who is none other than the wife of the deceased. It is clear evidence that her husband was working as a Messenger-cum-Sweeper in Sangameswara Grameena Bank, Rajapur Branch and drawing a salary of Rs.9,024-23 p.s., per month. P.W.2's evidence also corroborates with P.W.1 and he deposed that the deceased-Balaji was working as Messenger-cum-Sweeper in Sangameswara Grameena Bank and drawing a salary of Rs.9,024-23 P.S per month.

P.W.3 is a Branch Manger, A.P. Grameena Vikas Bank, Rajapoor Branch. He is the proper person to speak about the occupation and income of the deceased and to prove Ex.A7-Salary Certificate. His evidence is that the bank has issued Ex.A7-salary certificate to the deceased. In Ex.A7 only gross salary is shown. R.W.2 is the Administrative Officer of the second respondent-

appellant does not speak about the income of the deceased and his age in the evidence affidavit filed by him. In Ex.A1-complaint, K. Yadagiri, who is none other than the son of the deceased-Balaji stated that his father was an Attendar and aged about 55 years. In the charge-sheet under Ex.A2, the Investigating Officer stated that Balaji was 55 years and working as an Attender in Sangameswara Grameena Bank, Rajapur Branch & Village. In Ex.A3-Post Mortem Examination Report, age of the deceased noted as 55 years and the Doctors under Ex.A3 find that the death caused due to '*Hemorrhagic shock due to crush injury*' and there is nexus between the accident and the death. In Ex.A4-Inquest report also, the occupation of the deceased noted as Attendar and aged 55 years. Exs.A7 & A8 are the salary certificates. In Ex.A7, only gross salary is shown and in Ex.A8 the complete salary and deductions were also shown. According to Ex.A7, the salary of the deceased is Rs.9,024-23 p.s and whereas in Ex.A8 it is shown the gross salary as Rs.8,970-31 p.s and deductions are Rs.3,157-70 p.s., and Net Pay is Rs.5,812-61. Having considered that Ex.A8 which did not show any excess deductions and the gross salary of the deceased has to be taken as salary while deciding the dependency. Further, in Exs.A7 & A8, the date of birth of the deceased was shown as 12-05-1950. In all Exs.A1 to A4 and A7 & A8, the age of the deceased was noted as 55 years and according to Exs.A7 & A8, the date of birth of the deceased as 12-05-1950. Therefore, the trial Court rightly alleged the age of the deceased by the date of death as 55 years. The trial Court also considered the age of the deceased as 55 years and applied multiplier '11'. Taking into consideration the multiplier indicated in *Susama Thomas & Trilok Chandra as clarified in Charilie* since the claim is

under 166 of the Motor Vehicle Act. The trial Court also taking into consideration the income of the deceased as per Ex.A8, the monthly dependency calculated at Rs.5,813/- and the annual income of Rs.69,756/- and after deducing 1/3rd towards the personal expenses of the deceased had he been alive, arrived the dependency of the respondents at Rs.46,504/- per annum and rightly awarded a compensation of Rs.5,40,000/- with the present bank rate of interest at 7.5% which is just compensation valid and reasonable, which do not suffer from any legal infirmities warranting interference.

In the result, the appeal fails and accordingly the same is hereby dismissed with costs while confirming the award dated 09-01-2009 in O.P.No.97 of 2006 on the file of Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar.

As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

Date:17-03-2017.
mrb

JUSTICE N. BALAYOGI

