

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.4754 OF 2004

And

Cross-Objections (SR) No.4964 of 2005

COMMON JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the National Insurance Company Limited (3rd respondent in M.V.O.P. No.52 of 2000) under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') on the ground that there was fundamental violation of the policy as the driver of accident vehicle was not possessing valid subsisting driving licence when the accident took place, which the learned Chairman, Motor Accident Claims Tribunal-cum-IX Additional District & Sessions Judge (FTC), Krishna at Machilipatnam failed to notice and thereby passed order dated 30.08.2004 in M.V.O.P.No.52 of 2000 awarding compensation of Rs.56,000/- to the petitioner-claimant for the death of the deceased-Talam Parusuramayya.

2. The petitioner-claimant claimed compensation of Rs.1,00,000/- under Sections 140 and 166 of the Motor Vehicles Act.

3. The fact-situation would reflect that on 14.4.1999, while the deceased-Talam Parusuramayya was proceeding on his cycle from Polavaram towards his village, Kothagudem and when reached near the cool drink shop, a tractor bearing No.AHJ-4023 along with trailer bearing No.AHJ-4024 driven by the 1st respondent at high speed

came from Marlapalem side and dashed the cycle, due to which the cyclist died instantly. In that connection, Crime No.25 of 1999 was registered against the driver under Section 304-A of I.P.C. and charge-sheet was also laid and assigned C.C. No.124 of 1999 on the file of Judicial Magistrate of First Class, Tiruvuru.

4. According to the petitioner-claimant, the deceased was earning Rs.6,000/- per month and maintaining his family and, therefore, the petitioner-claimant claimed compensation of Rs.1,00,000/-.

5. The second respondent is owner of the vehicle and the third respondent is the insurer. Respondents 1 and 2 remained *ex parte* and respondent No.3 contested the same.

6. Requiring the petitioner to prove that the 1st respondent, driver of the vehicle, possessed valid subsisting driving licence when the accident took place, the Insurer sought to dismiss the claim petition. The Tribunal framed the following three issues in order to determine the liability and the compensation to which the petitioners entitled:

- (1) Whether there is rash and negligent driving of the vehicle by its driver?
- (2) Whether the petitioner is entitled to claim compensation, if so to what amount and from which of the respondent.
- (3) To what relief?

7. During enquiry, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of the petitioner-claimant. On behalf of the 3rd respondent, Senior Assistant in R.T.O. Office, was examined as R.W.1 and Ex.B1- Inquest report was marked, and also Exs.X1 to X3 documents were marked through R.W.1.

8. The Tribunal having analyzed the evidence of R.W.1, Senior Assistant in R.T.O. Office, Vijayawada, and basing on the ruling in *Nagashetty v. United India Insurance Company Limited* [2001 (6) ALD (SC)] held that the 3rd respondent is liable to pay compensation. Since the age of the deceased as 60 years on the date of accident, taken Rs.1,500/- as monthly earnings and deducting one-third thereof towards his personal living expenses, balance Rs.12,000/- per annum towards 'loss of dependency', applied the multiplier factor '4' and arrived at Rs.48,000/-. Besides, the Tribunal granted Rs.3,000/- towards 'funeral expenses' and Rs.5,000/- towards 'loss of consortium' and thus, held that in all, the petitioner-claimant is entitled to Rs.56,000/- with interest at 9% pa.. from the date of petition till realization.

9. Heard Smt. M. Bhaskara Lakshmi, learned Senior counsel for the appellant and Sri Yallabandi Ramatirtha, learned counsel for the 1st respondent-claimant.

No representation for the 3rd respondent. Though service was completed on the 2nd respondent, none appears for him.

10. For the sake of convenience, the parties hereinafter be referred to as arrayed before the Tribunal.

11. Though, it is contended by the learned Standing Counsel for the appellant that the driver, who is the 1st respondent in O.P., did not possess valid driving licence to drive the tractor-trailer and on that ground the fundamental violation is pointed out, but the evidence of R.W.1 clearly makes out that Ex.X3 is original driving licence of respondent No.1 and as per Ex.X2, the 1st respondent was having valid driving licence and it was valid upto 31.01.2003. He also makes it clear that Ex.X3 would clearly show that the respondent No.1 has got valid driving licence at the time of the accident.

12. It is no doubt true, it appears that the 1st respondent did not possess valid driving licence so far as driving tractor is concerned. But the very fact that he possessed valid driving licence and without proving the same will *suffice* to hold that the order under challenge does not suffer from any infirmity, since the trailer cannot be driven and it is only dragged by the tractor and it is linked with a hook to the tractor. Therefore, there is no merit in the appeal and the same deserves to be dismissed.

Cross-Objections (SR) No.4964 of 2005

13. Turning to the cross-objection (SR), though respondent No.1 - Cross-objector - petitioner again reiterated that the deceased was earning Rs.6,000/- per month, the Tribunal wrongly taken monthly income at Rs.1,500/-. But, one-thing is certain that proof of

income is not filed by the cross-objector before the Tribunal and, in fact, the deceased was 60 years old according to the Tribunal based on the material available on record. Therefore, there is no merit in that submission made by the cross-objector. However, except the amounts of Rs.5,000/- towards loss of consortium and Rs.3,000/- towards funeral expenses, no other amounts are granted by the Tribunal, such as loss of estate. Therefore, the petitioner is entitled to Rs.50,000/- towards conventional sums and, therefore, the compensation of Rs.56,000/- awarded by the Tribunal is enhanced to Rs.1,06,000/-.

14. Though, the claim is for award of Rs.1,00,000/- only and the amount now determined exceeds the claim, still, there cannot be any hindrance in awarding the amount more than the claim made in determining the just and adequate compensation in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh and others**¹, **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**² and **Rajesh and others v. Rajbir Singh and others**³.

15. Concerning rate of interest, the Tribunal awarded it at 9% per annum and the same is maintained. But on the enhanced amount of Rs.50,000/-, interest at 7.5% per annum is awarded in view of the decision rendered by the Hon'ble Supreme Court in **Rajesh**³.

¹ AIR 2003 SC 674

² 2012 ACJ 191 (SC)

³. 2013 ACJ 1403

16. In the result, the appeal is dismissed, while Cross Objection (SR) No.4964 of 2005 is allowed, and the order and decree, dated 30.08.2004 passed by the Tribunal in M.V.O.P. No.52 of 2000 are modified enhancing the compensation to Rs.1,06,000/- from Rs.56,000/- with interest at 9% per annum on Rs.56,000/- awarded by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.50,000/- from the date of petition till the date of realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

Dt. 26.10.2017
Gbs/Mgr

A. SHANKAR NARAYANA