

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1133 OF 2007

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'), by the appellant-respondent No.4 in O.P.No.500 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XXII Additional Chief Judge, City Criminal Courts, Hyderabad (for brevity, 'the Tribunal').

Heard both the learned counsel for the appellant and the learned counsel for respondent No.2-insurer, apart from perusing the material available on record. Though served with notice, none appeared for respondent Nos.1 and 3 to 7 and there is no representation on their behalf.

Learned counsel appearing on behalf of the appellant would submit that the respondents-claimants have pleaded that the deceased was earning Rs.2000/- per month but the Tribunal has taken the monthly earnings of the deceased @ Rs.3000/- which is erroneous and granted excess compensation. The driver of the DCM van bearing No.AP02V 1528, which is a heavy vehicle, is responsible for the occurrence of the accident. At the time of the accident there was a load in the crime vehicle. There is evidence to believe that the accident occurred due to the rash and negligent driving of the husband of the deceased and the driving of the DCM van only. The Tribunal has erroneously apportioned the liability against the insurer of the scooter bearing No.AP 28E 6846 which is contra to the evidence on record. The compensation awarded in this

case i.e. Rs.3,87,000/- and tagging 70% of the liability against the appellant-respondent No.4 is erroneous and ultimately prayed to set aside the same.

The learned counsel appearing for the second respondent-insurer of the DCM van bearing No.AP02V 1528 contended that there is specific evidence to hold that there was rashness and negligence on the part of the rider of the scooter bearing No.AP 28E 6846. The findings of the Tribunal are based on record. There are no mitigating circumstances to vary the impugned order and prayed to dismiss the present appeal.

In view of the contentions put forth by the learned counsel, the point that arises for consideration is whether the impugned award passed by the Tribunal in O.P.No.500 of 2004 is liable to be set aside against appellant-insurer of the scooter bearing No. AP 28E 6846?.

Though the Tribunal, having analysed the evidence of P.W.1 and the documents marked as Ex.A1-C.C. of F.I.R., Ex.A2-C.C. of the charge sheet, Ex.A3-C.C. of the Inquest report, Ex.A4-C.C. of the Post Mortem report and Ex.A5-C.C. of M.V.I.report, held that both the rider of the scooter bearing No.AP 28E 6846 and the driver of the DCM van bearing No. AP02V 1528 are responsible for the occurrence of the death of Smt.K.Mallamma, and granted the compensation of Rs.3,87,000/- with interest @ 7.5% p.a. only from the date of filing of O.P. till the date of realisation. As per the evidence of P.Ws.1 and 2, the deceased in this case by name

Smt.K.Mallamma was pillion rider on the scooter driven by her husband-P.W.1. P.W.1 clearly and categorically stated in his evidence that the rider of the scooter bearing No.AP 28E 6846 by name H.Mallikarjuna Sastry drove the scooter in high speed and in a rash and negligent manner and took a sudden turn, across the DCM van bearing No.AP02V 1528, as a result the driver of the DCM van took the DCM van to right side and dashed the scooter, consequently it resulted in the death of the deceased-K.Mallamma. As per the criminal case record both the drivers of the scooter and the DCM van bearing No.AP02V 1528 were charge-sheeted for causing the death of the deceased-Smt.K.Mallamma. It is also the evidence of P.W.1 that he was driving the scooter and there was no negligence on his part in causing the death of the deceased. P.W.2 has also deposed on same lines but the Tribunal did not consider his evidence stating that he was not cited as witness in the charge sheet. Though R.W.1-Ch.Veerabhadra Sastry deposed that he was not responsible for the occurrence of the accident, since he is an accused in a criminal case, it is not safe to act upon his evidence. There is specific evidence of P.Ws.1 and 2 that the rider of the scooter bearing No.AP 28E 6846 is more responsible for the occurrence of the death of the deceased. Had the driver of the DCM van bearing No.AP02V 1528 was vigilant and careful in driving the vehicle, he could have averted the accident. He is also responsible for the occurrence of the accident in this case. Considering the totality of the circumstances, the Tribunal held that both the driver of the scooter and the driver of the DCM van are responsible for the

occurrence of the accident in 70% and 30% ratio respectively and apportioned the liability accordingly and this finding is based on record. There is nothing to take a different view and it is liable to be confirmed.

As far as the grant of compensation in favour of the claimants is concerned, though they have pleaded that the deceased was earning Rs.2000/- per month the Tribunal has taken her earnings as Rs.3000/-. As seen from the record, the deceased was aged 38 years. Has she not met with an accident definitely there would have been increase in her earnings. The adoption of Rs.3000/- monthly income is not erroneously taken by the Tribunal. On this ground the finding recorded by the Tribunal cannot be disturbed. In view of the facts and circumstances stated supra, all contentions raised on behalf of the appellant-insurer do fail.

The appeal is devoid of merits and is liable to be dismissed. Accordingly, the appeal is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed.
No order as to costs.

26th July, 2017
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Dr.SHAMEEM AKTHER, J