

**THE HON'BLE MR JUSTICE N.BALAYOGI**

**M.A.C.M.A. No.856 of 2008**

**JUDGMENT:**

The appellants/claimants aggrieved by the Award and Decree dated 5.9.2007 in O.P. No.103 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Court) Hindupur, preferred this appeal besides other grounds on the grounds that the Tribunal ought to have considered that the deceased as a agricultural coolie used to earn Rs.3,000/- to Rs.5,000/- per month and arrived at the loss of dependency, as claimants are depending only on the income of the deceased. Further, the Tribunal ought to have considered that the deceased has involved in the accident while traveling on motor vehicle as an agricultural coolie and ought to have granted decree jointly and severally against respondents 1 and 2. The multiplier applied is incorrect. Further, the Tribunal failed to consider loss of earnings and prospective loss as claimed by the appellants and also failed to grant the transportation and funeral expenses as claimed by the appellants.

2. For convenience sake, the parties are hereinafter referred to as they were arrayed in the O.P before the tribunal.

3. The claim of the petitioners is that the first petitioner is the wife, second petitioner is the son and petitioners 3 and 4 are the parents of the deceased Nanjundappa. While so, on 18.10.2005 at about 2 PM

while the deceased was returning from Cherukuru and was waiting for a bus near Cherukuru Village, he boarded a van bearing No.AP 02 U 4319 to go to Madakasira as a coolie to load fruits. The driver of the van drove the van in a rash and negligent manner and consequently the deceased fell down on the road from the running vehicle and sustained bleeding injuries. Later, the deceased was shifted to Government Hospital, Penukonda, where he died.

4. The contention of petitioners is that the deceased was doing agricultural coolie and seasonal business and getting monthly income of Rs.3,000/- to Rs.5,000/- per month. The 1<sup>st</sup> respondent being the owner of the van and the 2<sup>nd</sup> respondent being the insurer of the van are jointly and severally liable to pay the compensation.

5. The respondents – owner and insurer filed separate written statements contending that the accident occurred not due to driver of the van, but due to negligence of the deceased himself. The deceased was not traveling in the van as a coolie to load fruits and he never received injuries in the accident.

6. The 2<sup>nd</sup> respondent further contended that the liability of the 2<sup>nd</sup> respondent is only contractual one and the liability is subject to proof of insurance coverage to the vehicle. The deceased was an unauthorized passenger and his risk is not covered under the terms and conditions of the policy of the insurance and also as per the provisions of the Motor Vehicles Act. The deceased was suffering from ill-health and fell down on his own from the running vehicle resulting his death.

Even driver is not responsible for the accident. The driver of the van was not holding valid and effective driving licence at the time of the accident.

7. In view of the rival contentions, after considering the entire material, the Tribunal settled the following issues for trial :

- 1) Whether the accident took place on account of rash and negligent driving of the driver of the van bearing No.AP 02 V 4319?
- 2) Whether the petitioners are entitled for compensation, if so, to what amount and from which of the respondent?
- 3) To what relief?

8. Now the point that arises for determination is whether the award of the Tribunal is legal and do not suffer from any legal infirmities warranting interference and enhancement of the compensation.

9. Learned counsel for the appellants contended that the Tribunal did not consider monthly income of the deceased, the multiplier applied is bad and that while the deceased was traveling as an agricultural coolie the accident occurred.

10. Whereas, respondents contended that findings and award of the Tribunal are legal and do not suffer from any legal infirmities warranting interference.

11. P.W.1 is none other than the first petitioner and wife of the deceased. Her evidence is that the second petitioner is son and

petitioners 3 and 4 are parents of the deceased and they are dependents. Absolutely there is no rebuttal evidence with regard to relationship of the claimants with the deceased and also their dependency.

12. It is pertinent to note that P.W.1 is not an eyewitness to the accident. She reiterated the pleadings in the claim petition. P.Ws.2 and 3 are eyewitnesses to the accident. As per the evidence of P.W.2 the deceased boarded the offending van which came from Penukonda side and proceeding towards Madakasira on 18.10.2005 at 1.30 PM at Cherukuru bus stop. Similarly, P.W.3 also stated that he witnessed the accident on 18.10.2005 at 2.00 PM while he was present by the side of the main BT road by grazing cattle. At that time, one 407 van bearing No.AP 02 U 4319 came from Penukonda side in a rash and negligent manner at high speed, resulting which the deceased fell down on the road from the said van and received bleeding injuries and died in the Government Hospital, Penukonda. P.W.3 was cross-examined at length. The suggestion to P.W.3 by the 1<sup>st</sup> respondent was that at the time of accident the van was proceeding slowly, but the same is denied. There is no cross-examination of P.Ws.2 and 3 about the rash and negligent driving of the driver of the van by the 2<sup>nd</sup> respondent – Insurance Company. Ex.A1 is the copy of the F.I.R. which was registered against the driver of the van bearing No.AP 02 U 4319 and Ex.A5 is the charge sheet filed against the said driver.

13. There is no rebuttal evidence to rebut the evidence of P.Ws.2 and 3 that at the time of accident the driver of the van drove the

van in a rash and negligent manner and as a result the deceased fell down and sustained injuries and died in the Hospital. Accordingly, the findings of the Tribunal that the accident was due to rash and negligent driving of the driver of the van bearing No.AP 02 U 4319 is legal, valid and do not warrant any interference. The Motor Vehicle Inspector in ExA5 – MVI Report opined that the accident was not due to mechanical defects, therefore the evidence of P.W.1 supported by Exs.A4 and A5 well established that the accident was due to rash and negligent driving of the driver of the offending van. Accordingly, I am of the considered view that findings of the Tribunal that the accident was due to rash and negligent driving of the driver of the van bearing No.AP 02 U 4319 is legal, valid and do not suffer from any legal infirmities warranting interference.

14. Ex.B1 is the policy issued by the 2<sup>nd</sup> respondent to the offending vehicle which is a goods carrier and at the time of accident the deceased was traveling in the said carrier.

15. With regard to the age and income of the deceased, there is evidence of P.W.1 only. The evidence of P.W.1 is that her husband went in 407 van bearing No.AP 02 U 4319 as a coolie. At the time of accident, the driver drove the van with high speed and in a rash and negligent manner resulting the deceased fell down from the van and succumbed to the injuries.

16. During cross-examination of P.W.1, she stated that her husband was getting Rs.100/- per day by doing coolie work and was

aged about 26 years. She denied the suggestion that her husband fell down from the van because of fits. There is no rebuttal evidence to the evidence of P.W.1 to the effect that the deceased was suffering from fits. Absolutely there is no rebuttal evidence to establish that due to fits the deceased fell down from the van on his own negligence and there is no negligence on the part of the driver. For the evidence of P.W.1, there is no rebuttal evidence. During cross-examination of P.W.1 by 1<sup>st</sup> respondent it was elicited that her husband used to earn Rs.100/- per day as a coolie. The Tribunal having considered the evidence of P.W.1 and also other circumstances came to the conclusion that absolutely there is no evidence to prove the occupation and earnings of the deceased at Rs.3,000/- to Rs.5,000/- per month. As per the petition the deceased was 26 years old at the time of the accident. It is the fact that a person of such age group will not sit idle without doing any work. Certainly he would go for some work and earn to maintain his family.

17. Since there is no corroborative evidence with regard to the income of the deceased, the Tribunal considered the gazette notification issued by the Government of Andhra Pradesh fixing the minimum wage of unskilled labours at Rs.50/- per day. Because the minimum wages fixed by the Government at Rs.50/-, the daily income of the deceased cannot be fixed less than Rs.50/-, as such, the Tribunal has rightly fixed the daily income of the deceased at Rs.70/- and worked out the annual income at Rs.25,200/-.

18. By applying *Sarla Verma v. DTC*<sup>1</sup> case the relevant multiplier applicable to the age of the deceased is '17', which the Tribunal has rightly applied. Since the claimants are four in number, by applying *Sarla Verma's case* (supra) 1/4<sup>th</sup> has to be deducted towards the expenses of the deceased had he been alive, but the Tribunal has erroneously deducted 1/3<sup>rd</sup> income, which has to be modified.

19. The annual income of the deceased is estimated at Rs.25,200/- and after deducting 1/4<sup>th</sup> towards the expenditure of the deceased himself had he been alive, the loss of dependency should be Rs.18,900/- (25200 – 6300) and by applying multiplier '17', the compensation comes to Rs.3,21,300/-, which is the loss of dependency to claimants – appellants on account of the death of the deceased.

20. The counsel for appellants submits that in view of the recent judgment of the Apex court in *National Insurance Company Limited v. Pranay Sethi and Others*<sup>2</sup> the claimants are entitled for loss of estate, loss of consortium and funeral expenses at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The trial Court in its order granted a sum of Rs.5,000/- towards loss of estate; Rs.10,000/- towards loss of consortium and Rs.3,000/- towards funeral expenses. In view of the Constitutional Bench Judgment, the loss of estate is enhanced from Rs.5,000/- to Rs.15,000/-, while the loss of consortium is enhanced

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<sup>1</sup> (2009) 6 SCC 121

<sup>2</sup> 2017 (ACJ) 2700

from Rs.10,000/- to 40,000/- and funeral expenses from Rs.3,000/- to Rs.15,000/-.

21. As per the evidence of P.W.1 her husband was traveling in the van as a loading and unloading coolie. The evidence of P.W.2 is that on the date of accident i.e., on 18.10.2005 at about 1.30 PM while he was waiting for a bus at Cherukuru bus stop, the deceased also came to the bus stop and at that time, one 407 van bearing No.AP 02 U 4319 came from Penukonda side to go towards Madakasira, then the driver of the van asked the deceased to come for coolie work to loading and unloading the pomegranate fruits, then the deceased fixed coolie and got up in the said van and traveled in the said van as a coolie and after some time, he came to know that the said van met with an accident due to rash and negligent driving of the driver of the van. During cross-examination P.W.2 stated that the driver alone came in the van to the scene of offence. He is not working as coolie. He does not know the name of the driver of the crime vehicle. The driver asked the deceased to go to Madakasira and both of them went away in the crime vehicle. There is contradictory statement in the evidence of P.W.2 itself. In chief-examination he stated that the driver of the van bearing No.AP 02 U 4319 asked the deceased to come for coolie work. Whereas in the cross-examination, he stated that he does not know the name of the driver and the driver asked the deceased to go to Madakasira and both of them went away in the crime vehicle.

22. In the claim petition at page 2 column 10 it was recorded that the deceased went to see his sister at Cherukuru village and while returning to his village, he boarded 407 van as coolie to load pomegranate fruits at Amidalagondi Village.

23. P.W.3, who is grazing cattle at the bus stop, stated that at that time, one 407 van bearing No.AP 02 U 4319 came from Penukonda side in a rash and negligent manner at high speed resulting which the deceased fell down on the road from the said van. Considering the above facts and evidence of P.Ws.1 and 2, Ex.A1 - F.I.R. and Ex.A5 -charge sheet, wherein it was stated that the deceased came to visit his aunt at Cherukuru village and while waiting for a bus, one 407 van bearing No.AP 02 U 4319 came there, then the deceased requested the accused driver to allow him to travel in the van up to Madakasira, then the accused driver asked him to come as a coolie to load the van with pomegranate fruits at Elamanchili village and then he will allow him to travel up to Madakasira, which clearly shows that the deceased was not a coolie on the said offending vehicle. He only went to see his aunt at Cherukuru and while returning, he boarded the offending van. The 1<sup>st</sup> respondent in the written statement stated that he does not know about the traveling of the deceased in the crime vehicle.

24. Ex.A1 was presented by the cleaner of the van where he stated that a person of 30 years old boarded the van and he sat on the back of the body of the van. There is no mention in Ex.A1 that the

deceased boarded the van to load fruits. The cleaner of the van is not examined to prove that the deceased was traveled in the van as a coolie. Absolutely there is no evidence at all to prove that the deceased was traveling in the van as a coolie. In such circumstances, the Tribunal is right in holding that presence of the deceased on the van was as an unauthorized passenger, but not as a coolie. The 1<sup>st</sup> petitioner, being the owner of the offending vehicle, is vicariously liable for the acts of the driver appointed by him. Therefore, the 1<sup>st</sup> respondent alone is vicariously liable for the negligent act of his driver. Hence, he is liable to pay the compensation.

25. However, considering the fact that the deceased was a coolie and petitioners/claimants are dependents on the said deceased and they have no other source of income, by virtue of Ex.B1 policy the 2<sup>nd</sup> respondent has to pay and recover the amount.

26. Accordingly, the appeal is allowed in part with costs and the Award and Decree dated 5.9.2007 in O.P. No.103 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Court) Hindupur, is set aside and modified enhancing the compensation awarded by the Tribunal from Rs.3,03,600/- to Rs.3,91,300/- together with interest @ 7% per annum from the date of the petition i.e., 3.7.2006 till the date of realization with proportionate costs against respondent No.1. The respondent No.2 is directed to deposit the said amount after adjusting the amount if any already deposited or paid

within a period of one month from the date of receipt of a copy of the order and later recover the same from the respondent No.1

27. The award is apportioned among the claimants awarding Rs.1,91,300/- to the 1<sup>st</sup> claimant, she being a wife of deceased and Rs.1,00,000/- to claimant No.2, he being son of the deceased and Rs.50,000/- each to claimant Nos.3 and 4, they being parents of deceased with proportionate costs and interest.

28. On such deposit of the compensation, the claimants 1, 3 and 4 are permitted to withdraw the amount.

29. The amount of Rs.1,00,000/- (Rs.One Lakh only) awarded to the 2<sup>nd</sup> claimant, being son of the deceased, shall be kept in a fixed deposit in any nationalized bank.

30. The Advocate fee is fixed at Rs.2,500/- (Rs.Two Thousand and Five Hundred Only).

31. Miscellaneous petitions pending, if any, in the appeal shall stand closed.

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JUSTICE N.BALAYOGI

22<sup>nd</sup> December, 2017  
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