

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1868 OF 2006

JUDGMENT:

1. This Appeal is preferred against the order, dated 26.06.2006, in M.V.O.P. No.917 of 2004 on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Vijayawada, Krishna District (for short, 'the Tribunal').

2. The parties hereinafter referred as arrayed in the Motor Vehicles Original Petition.

3. Appellants herein are the petitioners, 1st respondent herein is the driver, 2nd respondent herein is the owner and 3rd respondent herein is the insurer of Toyota Qualis bearing No.AP.36V 2226 (for short, 'the Qualis'), who filed a petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.3,50,000/- on account of the death of K. Raju (hereinafter referred to as 'the deceased'), who happened to be the son of 1st and 2nd appellants-petitioners and brother of 3rd and 4th appellants-petitioners, in a motor vehicle accident occurred on 15.08.2004.

4. The brief facts of the petition are that, on 15.08.2004, at about 01:00 a.m., when the deceased and two others were returning to Vijayawada from Tadepalli by motorcycle bearing No.AP-16-R-5524, and when they reached near 6th gate of Prakasam Barrage, the Qualis came in their opposite direction, at high speed, in a rash and negligent manner, and dashed against the motorcycle of the deceased. As a result of which, the deceased, who was pillion driver, along with two others fell down and sustained grievous injuries. Immediately, the deceased was shifted to a nearby hospital and from there to Vijaya Hospital, for better treatment;

while undergoing treatment he succumbed to injuries on 21.08.2004. Subsequently, Tadepalli police registered a case in Crime No.147 of 2004 for the offences under Sections 337 and 304-A I.P.C. against the 1st respondent, investigated into the matter, and filed charge sheet before the Additional Junior Civil Judge's Court, Mangalagiri, Guntur District. At the time of the accident, the deceased was hale and healthy, working as mason, earning Rs.130/- per day and contributing the same to the petitioners. The petitioners incurred an amount of Rs.44,264/- towards medical expenses of the deceased. Due to the untimely death of the deceased, the petitioners lost the love and affection of the deceased and suffered mental trauma. Hence, filed the petition seeking compensation of Rs.3,50,000/- against the respondents.

5. Respondent No.1, driver of Qualis, remained *ex parte* before the Tribunal.

6. Respondent Nos.2 and 3, owner and insurer of the Qualis, filed separate counters, raising the same averments, *inter-alia* contending that the age, avocation and monthly income of the deceased be put to strict proof and further there was no negligence on the part of the driver of Qualis and, finally, contended that the compensation claimed by the petitioners is highly excessive, exorbitant and prayed for dismissal of the Petition.

7. The Tribunal, after framing the issues and considering the pleadings and evidence of the witnesses P.Ws.1 to 3 and the documents Exs.A-1 to A-13, Exs.X-1 to X-4, and Ex.B-1, granted compensation of Rs.2,00,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization, making respondents 1 to 3 jointly and severally liable to pay the compensation.

8. Being aggrieved by the quantum of compensation, the appellants-petitioners preferred this Appeal seeking enhancement of the compensation.

9. Heard the arguments of Mr. Sai Gangadhar Chamarty, learned counsel for the appellants-petitioners, and Mrs. A. Jayanthi, learned standing counsel for the 3rd respondent-insurer.

10. The appeal against the 1st respondent-driver of Qualis was dismissed for default *vide* order of this Court on 04.07.2016 and in spite of service of notice on the 2nd respondent-owner of Qualis, none entered appearance and there is no representation on his behalf. However, absence of 2nd respondent-owner of the Qualis is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it is held as follows:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

¹ 2001(1) ALT 495 (D.B.)

11. Learned counsel for the appellants-petitioners submits that the Tribunal erred in holding that there was contributory negligence on the part of the motorcycle rider and deducted 25% of the compensation assessed; further submitted that the Tribunal has taken only Rs.1,800/- p.m. as income of the deceased though he was earning an amount of Rs.130/- per day by doing mason works. He further submitted that instead of taking the multiplier applicable to the age group of the deceased, the multiplier applicable to the average age of the parents was taken and determined the compensation, and also granted very meager compensation on all other accounts such as medical expenses, funeral expenses and loss of love and affection. The compensation of Rs.3,50,000/- claimed by the petitioners is reasonable and, ultimately, prayed to grant the same.

12. On the other hand, learned standing counsel appearing on behalf of the 3rd respondent-insurer contended that the accident occurred due to the rash and negligent driving of the rider of the motorcycle. Since it is a case of triple riding, the Tribunal ought not to have granted any compensation to the petitioners and ultimately prayed to dismiss the Appeal.

13. In view of the rival contentions, the following points have come up for determination:

- 1) Whether the accident occurred only due to the rash and negligent driving of the rider of the motorcycle bearing No.AP16R 5524?
- 2) Whether the appellants-petitioners are entitled for enhancement of compensation, as prayed for?
- 3) To what relief?

14. **POINT No.1:** P.W.1 is the father of the deceased; P.W.2 is rider of the motorcycle and P.W.3 is the doctor. Exs.A-1 to A-13, Exs.X-1 to X-4 and Ex.B-1 are the documents marked before the Tribunal. The contention of learned counsel for the 3rd respondent-insurer is that it is a case of triple riding; the accident occurred due to the rash and negligent driving of the rider of the motorcycle; there was no negligence on the part of the driver of the Qualis.

15. P.W.1 father of the deceased has substantiated the contentions of the petitioners stating that there was rash and negligence on the part of the driver of the Qualis. Admittedly, he is not an eyewitness to the occurrence of the accident. P.W.2, who is rider of the motorcycle and eyewitness to the accident, had categorically deposed that when their motorcycle reached 6th gate of Prakasam Barrage, the driver of the Qualis drove the same, in a rash and negligent manner, at a high speed, and dashed the motorcycle of the deceased, as a result of which, he also sustained injuries. However, he admitted in his evidence that this is a case of triple riding; he was not having valid driving license. Charge sheet is filed against the driver of the Qualis for the offences punishable under Sections 337 and 304-A I.P.C. Ex.A-1 is the attested copy of F.I.R.; Ex.A-2 is the charge sheet; Ex.A-3 is the rough sketch; Ex.A-4 is the Motor Vehicle Inspectors Report; as per Ex.A-4, there was no mechanical defect in the Qualis and Exs.A-5 and A-6 are the inquest and postmortem reports of the deceased. As per the evidence of P.W.2 and a perusal of the above documents, it is clear that it is a case of triple riding. The investigation conducted by the Police reveals rashness and negligence on the part of the driver of the Qualis in causing death of the deceased. Though the 3rd respondent-insurer did not examine the driver of the Qualis or any other person to prove the rash and negligent driving by the rider of the

motorcycle, the evidence of P.Ws.1 and 2 and the above documents cannot be accepted *in toto*. The Tribunal while analyzing the entire evidence on record, on this aspect held that in case of triple riding, there is every possibility of losing balance; had there was no triple riding, the driver of the motorcycle could have easily averted the accident.

16. Learned counsel for the 3rd respondent-insurer had relied on a decision of this Court in ***Cholamandalam M.S. General Insurance Company Limited Vs. Mamidisetti Satish and others***², wherein it was held as follows:

“So in its opinion, mere violation of Section 128 of MV Act, *per se*, will not amount to contributory negligence. Be that as it may, in ***United India Insurance Company Limited Vs. K. Anjaiah*** {(2004 AIHC 1627 (AP)}, a learned Judge of this Court relying upon the decision of a Division Bench of Madras High Court in the case of ***Managing Director, Tamil Nadu state Transport Corporation Limited Vs. Abdul Salam*** {2004 ACJ 1827 (Madras)} with reference to section 128 of MV Act has observed as follows:

“On a plain reading of the above provision, it is clear that triple riding is prohibited on a two-wheeler. When a statutory bar is imposed under the Act, it is not made to be ignored by the riders of two-wheelers, but to be followed in their own interest and safety. Though it has come in the evidence of PW2 who claims to be an eyewitness to the accident that on the fateful day the driver of the offending lorry drove the lorry in a rash and negligent manner resulting in accident, but it is common understanding that one will certainly feel discomforted when riding a two-wheeler with two pillion riders and naturally his balance over the vehicle will be limited by reasons of accommodating two pillion riders and he will not have that ease and comfort of riding as with one

² 2016 ACJ 1865

pillion rider. In the instant case, it is admitted that there was triple riding on the scooter. Under those circumstances, even in the absence of independent evidence adduced by the insurance company that the accident had occurred due to triple riding, it can be reasonably presumed that the rider of the scooter was discomforted by reasons of allowing two pillion riders and thus contributed in causing the accident. Had he been riding the scooter with one pillion rider, probably he would have averted the accident by swerving the scooter to the extreme left side, but could not do so, probably, his hand and leg movement was limited due to the congestion. In such view of the matter, the culpability in causing the accident is fixed at 75 per cent on the part of the driver of the offending lorry and 25 per cent on the part of the rider of the scooter. I am fortified in my view by the decision in ***Abdul Salam*** (supra)”

17. In view of the observations made in the decisions referred supra, the whole claim cannot be made against the respondents 1 and 2, who are the driver and owner of the Qualis and as such the Tribunal rightly apportioned the contributory negligence on the part of the driver of the Qualis and rider of the motorcycle in the ratio of 75:25 respectively, assigning valid reasons. In fixing the above ratio, the finding is based on the record; no other opinion can be substituted. The point is accordingly answered.

18. **POINT Nos.2 and 3:** It is evident from the evidence of the witnesses and the documents marked that the appellants-petitioners are none other than the parents, sister and minor brother of the deceased respectively. There is evidence to believe that the deceased was aged 18 years on the date of the accident. Though the petitioners had submitted that the deceased was earning Rs.130/- per day, as mason, but failed

produce any satisfactory evidence in respect of the same. However, in view of the decision of this Court in ***Machineni Rama Devi and others Vs. M. Satyanarayana and another***³, wherein this Court relied on the decision of the Apex Court in ***Lakshmi Devi and others Vs. Mohd. Tabbar and another***⁴, wherein it was held that the income of a deceased working in an unorganized sector, where there can be no evidence of the wages being paid to him, can be taken as Rs.3,000/- p.m. The Tribunal based on the evidence found the deceased was aged 18 years; no different view can be taken. In view of the decisions referred supra, in the instant case, the income of the deceased is taken into consideration as Rs.3,000/- per month and as such his annual income would come to Rs.36,000/- (3,000/- x 12) and, in view of the principle laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another***⁵, when the deceased is a bachelor, 50% of his income has to be deducted towards his personal and living expenses. After deducting 50%, the contribution of the income of the deceased to his family would come to Rs.18,000/-. However, the Tribunal, erroneously, relying on the second column in the table of II Schedule of the Act, has taken the multiplier '15', which is applicable to the average age group of the parents of the deceased i.e., 43 years. But, in view of the decisions of the Apex Court in ***Amrit Bhanu Shali and others Vs. National Insurance Company Limited and others***⁶, ***Reshma Kumari and others Vs. Madan Mohan and another***⁷ and ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others***⁸, though the deceased is a bachelor, the multiplier applicable to the age group of the deceased can be taken into consideration and as such the multiplier '18', applicable to the age

³ 2013 (6) ALD 178

⁴ 2008 (3) ALD 129 (SC)

⁵ 2009 (6) SCC 121

⁶ 2012 (11) SCC 738

⁷ 2013 (9) SCC 65

⁸ 2015 (6) SCC 347

group of the deceased between 15 to 20 years, is taken into consideration in the instant case. Then, the compensation to be awarded under the head of loss of dependency would come to Rs.3,24,000/-.

19. P.W.3, doctor, had also deposed about the treatment given to the deceased from 15.08.2004 to 21.08.2004 and while undergoing treatment, he succumbed to the injuries on 21.08.2004. The ample oral and documentary evidence placed on record reveals the same. There is also evidence to believe the genuineness of Ex.A-10 to A-13 – bunch of medical receipts and prescriptions, Ex.X-1 - case sheet, Ex.X-2 - x-rays, Ex.X-3 - scan reports and Ex.X-4 - lab reports. There is nothing to disbelieve the same. So, it is evident from the record that the parents of the deceased might have spent an amount of Rs.25,000/- towards the treatment of the deceased and the same is rightly granted by the Tribunal towards medical expenses. Further, the appellants-petitioners are entitled to an amount of Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection. In all the appellants-petitioners are entitled for an amount of Rs.3,84,000/-. As discussed above, if Rs.3,84,000/- is apportioned in the ratio of 25:75 between the driver of the motorcycle and the respondents herein, who are the driver, owner and insurer of the Qualis, the appellants-petitioners are entitled for an amount of Rs.2,88,000/- from the respondents, since there is valid insurance of the Qualis under the original of Ex.B-1. As the appellants-petitioners have intentionally avoided to make the owner and insurer of the motorcycle, involved in the accident, as parties to the claim petition, they have to forego the compensation of Rs.96,000/-, which is apportioned towards 25% negligence of the motorcycle owner.

20. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.2,00,000/- to

Rs.2,88,000/-, keeping intact the rate of interest of 7.5% p.a. awarded by the Tribunal. Out of the compensation awarded by this Court, all the appellants are entitled to equal share of compensation. Respondents 1 to 3 are jointly and severally liable to pay the compensation. After depositing the compensation amount, the appellants are permitted to withdraw their respective share of compensation amount. The other conditions in the impugned order remain unaltered.

21. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.

Date: 24.03.2017.
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Dr. SHAMEEM AKTHER, J



HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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M.A.C.M.A. No. 1868 OF 2006

Date. 24.03.2017

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