

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2638 OF 2005

JUDGMENT:

Heard learned standing counsel for the appellant-insurance company as well as learned counsel appearing for the respondents-claimants.

This is an appeal filed by the insurance company against the award dated 10.12.2004 passed by the Motor Vehicles Accidents Tribunal-cum-II-Addl. District Judge, Karimangar at Jagtial in OP No. 39 of 2004 whereby compensation amount of Rs.2,25,500/- was granted in favour of the claimants with proportionate costs and interest @9% per annum from the date of petition till realization.

The parties are hereinafter referred to as they are arrayed before the Tribunal.

The claimant No.1 is the widow and claimants 2 to 4 are the children of late Katipally Peddi Reddy who died in a road accident on 8.10.1999 at 10.30 PM at Aurangabad. The claimants filed a claim petition under Section 166 (1) © of the Motor Vehicles Act, which was later converted into one under Section 163-A of the Motor Vehicles Act seeking compensation of Rs.4,00,000/-. It is alleged by the claimants that on 8.10.1999 the deceased along with others engaged a jeep bearing No. AP 15 E 4999 belonging to 2nd respondent to go to Shani Singapur to have darshan of Lord Shani Mahatma and they left the village for Shani Singapur on the same day in the said jeep. When the jeep reached near Thoknaka on Aurangabad to Ahmadabad road, it was driven by the first

respondent in a rash and negligent manner at 10.30 PM and dashed it against a truck, due to which all the inmates of the jeep received injuries and the deceased died on the spot. The deceased was hale and healthy and was aged about 38 years by the date of accident. He was doing business in iron and hardware items and was also attending to the work of cultivation and was earning a sum of Rs.5,000/- per month and contributing the same for maintenance of his entire family.

Respondents 1 and 2 remained exparte. Third respondent-insurance company filed a counter denying about the manner of the accident and contended that the insurance particulars furnished by the claimants are not sufficient to trace out the policy and as such the third respondent denied that the vehicle was insured with it. Since this is a case of collision between two vehicles viz., jeep and a truck, the claimants ought to have made the owner and insurer company of the truck also as parties to the petition.

The claimant No.1 examined herself as P.W.1 and one of the passengers who was traveling in the jeep as P.W.2 and marked Exs.A1 to A5. The respondents did not examine any witnesses, but the third respondent filed the insurance policy and the same was marked as Ex.B1 by consent.

The Tribunal held that since the claim petition was converted into one under Section 163-A of the Motor Vehicles Act, there was no obligation on the part of the claimants to prove the negligence on the part of the jeep driver and based on the evidence of P.W.2 and Ex.A1, it found that the deceased died due to the accident arising out of the use of

motor vehicle i.e., jeep bearing No. AP 15 E 4999. Coming to the assessment of compensation, the Tribunal had taken the income of the deceased at Rs.1800/- per month and after deducting one third of his income towards his personal expenditure of the deceased, assessed the loss of contribution of deceased's income to his family at Rs.2,16,000/- (Rs.14,400x15) and awarded the same towards pecuniary damages. The Tribunal also granted a sum of Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and a sum of Rs.5,000/- towards loss of consortium. In all, the Tribunal granted compensation of Rs.2,25,500/-.

Since there is no substantial evidence adduced by the claimants establishing the income of the deceased through cultivation and business, the Tribunal seems to have taken the income of the deceased at Rs.1800/- by considering him as an agricultural labourer and accordingly awarded a sum of Rs.2,16,000/- towards pecuniary damages. So far as the assessment, if any, made by the Tribunal in this regard, this Court does not find any reasonable ground to intervene. This Court also does not find any substantial material to differ from the view taken by the Tribunal so far as awarding of compensation under the head of loss of estate, loss of contribution, loss of consortium etc. Accordingly this Court holds the compensation amount awarded by the Tribunal under the above heads is just and reasonable.

The learned standing counsel appearing for the appellant/insurance company argued that though the accident occurred due to the contributory negligence of both vehicles, but the claimants did not choose to implead the driver, owner and insurance company of other vehicle and

no evidence was adduced before the Tribunal to show about the manner of accident. The learned standing counsel also submits that the interest rate may be reduced from 9% to 7.5% per annum.

In a claim petition under Section 163-A of the Motor Vehicles Act, the claimants need not prove the negligence on the part of driver of vehicle and it is enough for them to prove that the deceased died out of use of motor vehicle. In this case the claimants have proved the said fact by producing the evidence of P.W.2 and Ex.A1-copy of FIR. Therefore, the first contention of the learned standing counsel for the appellant/insurance company cannot be accepted. However, with regard to the interest part, the second contention of the learned standing counsel can be accepted and the interest @ 9% is accordingly reduced to 7.5% per annum.

In the result, the appeal is allowed in part and the award passed by the Tribunal is confirmed except with regard to the rate of interest @ 7.5% per annum. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.17.2.2017
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