

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.1173 of 2009

JUDGMENT:

1. The appellants-claimants filed this appeal aggrieved by the award and decree dated 22.11.2006 in O.P.No.261 of 2005 on the file of the Chairman, M.A.C.T-Cum-Principal District Judge, Nalgonda.

2. The contention of the appellants is that the Tribunal ought to have taken the monthly income of the deceased at Rs.4,000/- and awarded more compensation particularly more amount under the heads of consortium and loss of estate.

3. The claim of the appellants is that the 1st appellant is the wife and appellants Nos.2 and 3 are the children of the deceased Mohd Ali. On 8.4.2005 at about 5.30 a.m., the deceased Mohd. Ali and his brother-in-law-Mohd. Sayeed (P.W.2) went to a bore well situated near Darga to fetch drinking water and while they were returning to their house situated at Devarakonda, at about 5.30 a.m., a tractor bearing No.AP 24 U 6341 came from Mallepally side in a rash and negligent manner with high speed and dashed the deceased from behind, as a result of which, he succumbed to injuries. The deceased used to earn Rs.4,000/- per month as groundnut vendor and contribute the same as maintenance to his family.

4. The 2nd respondent filed a counter denying the accident and the injuries sustained by the deceased in the accident involving the tractor bearing No.AP 24 U 6341 and also the age and income of the deceased. Further, insuring of the tractor with the 2nd respondent is also disputed by the 2nd respondent.

5. The Tribunal having considered the pleadings in the claim petition and the counter of the 2nd respondent framed the following issues:

(i) Whether the deceased Mohd. Ali died in the road accident? If so, whether the accident occurred due to rash and negligent driving of tractor bearing registration No.AP 24 U 6341 by its driver?

(ii) Whether the petitioners are entitled to claim compensation for the death of deceased? If so, what amount and from whom?

(iii) To what relief?

6. On behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. No oral evidence was adduced on behalf of the 2nd respondent. Ex.B1-copy of Insurance policy was marked on behalf of the 2nd respondent.

7. The main contention of the appellants is that the amounts awarded towards consortium, loss of estate are very meager and the Tribunal ought to have considered the monthly income of the deceased at Rs.4,000/-. P.W.1 is no other than the 1st appellant and the wife of the deceased whereas P.W.2 is a direct witness, who went along with the deceased Mohd. Ali to a bore well near Darga to fetch drinking water on 8.4.2005. The consistent evidence of P.Ws.1 and 2 is that on 8.4.2005 at 5 a.m., the deceased Mohd. Ali and P.W.2 went to a bore well situated near Darga to fetch water and at about 5.30 a.m., while they were returning home after fetching water, the tractor bearing No.AP 24 U 6341 came behind and dashed Mohd. Ali, as a result of which, he succumbed to injuries. The same facts deposed by P.Ws.1 and 2 are supported by Ex.A1- C.C. of FIR in Crime No.59 of 2005 on the file of Devarkonda Police station, Ex.A2-C.C. of charge sheet and Ex.A4-C.C. of M.V. Report. In Ex.A1, there is a clear assertion involving the tractor bearing No.AP 24 U 6341, which was driven by the driver with a high speed in rash and negligent manner on 8.4.2005 at about 5.30 a.m. and the accident was caused. There is no oral or

documentary evidence produced by the 2nd respondent rebutting the evidence of P.Ws.1 and 2 and also the documentary evidence under Exs.A1, A2 and A4. In the MV report under Ex.A4 clearly opined that the accident is not due to any mechanical defect of the tractor involved in the accident. Therefore, the Tribunal having considered the corroborative evidence of P.Ws.1 and 2 supported by Exs.A1, A2 and A4 came to a right conclusion that the accident was due to rash and negligent driving of the driver of the vehicle viz., tractor bearing No.AP 24 U 6341. Except making a bald suggestion to P.Ws.1 and 2 that the tractor was planted in order to claim the compensation, the 2nd respondent did not choose to enter into the witness box to depose the facts. In the absence of any such rebuttal evidence, the corroborative evidence of P.Ws.1 and 2 supported by A1, A2 and A4 well established that the accident was due to negligent driving of the driver of the tractor bearing No.AP 24 U 6341. The findings of the Tribunal are legal and valid and do not suffer with any legal infirmities.

8. Further, it is the contention of the appellants-claimants that the deceased used to earn Rs.4,000/- per month as a groundnut vendor. The consistent evidence of P.W.1 is that her husband-deceased Mohd. Ali was aged about 36 years as on the date of accident and he used to earn Rs.4,000/- per month. Ex.A3 is the P.M. report, according to which the deceased succumbed to injuries viz., Hemorrhage and shock due to rupture of lungs in the accident caused by the tractor. Accordingly, there is direct nexus between the accident and the death of the deceased on 8.4.2005. There is no rebuttal evidence produced by the 2nd respondent to the evidence of P.W.1. Therefore, the evidence of P.W.1 remained unchallenged and established that the deceased used to earn by selling groundnuts. With regard to the income, absolutely there is no material

except the solitary testimony of P.W.1. In a catena of decisions, it was held that in the absence of any evidence as to the income, the income can be taken between Rs.3,000/- to Rs.4,000/-. Having considered the facts in issue that the deceased was a groundnut vendor, the estimated monthly income of the deceased is arrived at Rs.3,000/-.

9. With regard to the age of the deceased, except the oral evidence of P.W.1, no proof of age was filed. In the absence of any such proof, necessarily we have to rely on the material available on record. In P.M. report under Ex.A3, the age of the deceased was noted as 36 years. In the absence of any such rebuttal evidence, having considered the evidence of P.W.1 and also the P.M. report under Ex.A3, the Tribunal rightly came to the conclusion that the deceased was aged about 36 years. Having considered the age of the deceased at 36 years, the relevant multiplier as per **Sarla Varma and others Vs. Delhi Transport Corporation**¹, is “15”. The estimated monthly income is Rs.3,000/- and annually, it comes Rs.36,000/- Since the claimants are three in number, 1/3rd thereof has to be deducted towards the maintenance of the deceased had he been alive. Then, it comes to Rs.24,000/- p.a. By applying the multiplier “15” the loss of earnings comes to Rs.3,60,000/-. In addition to the said amount, the appellants-claimants are entitled to Rs.5,000/- towards loss of estate; Rs.5,000/- towards funeral expenses. The 1st appellant being the wife of the deceased and aged about 32 years, is awarded with Rs.20,000/- towards consortium. Further, the appellants are entitled to Rs.10,000/- towards loss of love and affection towards the children.

¹ 2009 ACJ 1298

10. In all, the appellants-claimants are entitled to receive the compensation of Rs.4,00,000/- (Rupees Four Lakhs only). By virtue of Ex.B1 policy, respondents Nos.1 and 2 are jointly and severally liable to pay the compensation.

11. In the result, the MACMA is allowed in part and the award passed by the Tribunal in O.P.No.261 of 2005 is modified awarding an amount of Rs.4,00,000/- to the appellants-claimants with costs throughout and interest at the rate of 7.5% p.a., on the said amount from the date of petition i.e., 20.4.2005 till the date of deposit. Respondents Nos.1 and 2 are jointly and severally liable to pay the same. Respondents Nos.1 and 2 shall deposit the compensation within 30 days from the date of receipt of a copy of this judgment, after deducting the amount, if any deposited. The amount of compensation is apportioned among the appellants as follows:

- (i) The 1st appellant is entitled to receive Rs.2,00,000/- with proportionate costs and interest;
- (ii) The appellants Nos.2 and 3 are entitled to receive Rs.1,00,000/- each with proportionate costs and interest;
- (iii) On deposit of the compensation amount, the 1st appellant is permitted to withdraw the same.
- (iv) The amount of compensation apportioned to the appellants Nos.2 and 3 shall be kept in any Nationalized Bank till their attaining age of majority. After attaining the majority, appellants Nos.2 and 3 approach the Tribunal to take appropriate steps and to file an application to withdraw their share of amount. On such application being filed, the Tribunal shall pass appropriate orders.

- (v) Advocate's fee is fixed at Rs.2,000/-.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE N. BALAYOGI

Date: 5th October, 2017

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