

HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.1420 OF 2006

JUDGMENT:

This appeal arising out of the award dated 22.02.2006 passed in M.V.O.P.No.32 of 2005 on the file of Chairman, Motor Vehicle Accident Claims Tribunal-cum-IX Additional District Judge, Visakhapatnam. (for short "Tribunal").

2. The appellants are legal heirs of the deceased Venkateswarlu, claimed compensation of Rs.2,00,000/- on account of the death of deceased in the motor vehicle accident occurred on 24.11.2004. The Tribunal, on consideration of evidence, awarded compensation of Rs.1,85,000/- with interest at 7.5% per annum from the date of petition till realization. The Tribunal apportioned the liability between the deceased and the respondents at 50% each holding both of them negligent. Accordingly awarded the compensation of Rs.1,85,000/- against the respondents and the deceased.

3. The appellants, being aggrieved by the impugned award, preferred this Appeal.

4. The short point that arises for consideration in this appeal is:

Whether there is any contributory negligence on the part of the deceased, and, if so, to what extent he is liable?

5. Admittedly, the accident occurred on highway at about 6.00 P.M while the deceased was crossing the road in front of

their mess, then a lorry came at high speed and dashed against the deceased. The Tribunal held that there is 50% negligence on the part of the deceased and 50% on the part of the driver of the crime vehicle. The reason was that the deceased did not take proper care and caution, while crossing the road.

6. Heard Sri M.A.V.S.Bhagwan, learned counsel for the appellants, and Sri M.S.Bhaskar Rao, learned counsel for the 2nd respondent.

7. Learned counsel for the appellants submitted that there is no negligence on the part of the deceased, that due to rash and negligent driving of the driver of the crime lorry, the accident had occurred, therefore, the appellants are entitled for the entire compensation amount from the respondents.

8. On consideration of the evidence, it is obvious that the complaint was lodged by the son of the deceased. Basing on which, the police registered a case against the driver of the crime vehicle. The appellants filed Ex.A.1-attested copy of FIR in Crime No.123 of 2004 of Gajuwaka Traffic Police Station, Visakhapatnam and Ex.A.4-attested Xerox copy of charge sheet. The charge sheet clearly reveals that due to rash and negligent driving of the driver of the lorry, the accident had occurred. There is no material in the charge sheet to show that there is negligence on the part of the deceased. Ex.A.2 is the Postmortem Report, which discloses

that there are nearly 10 ante mortem injuries received by the deceased. It is also obvious that there is a Church by the side of the road. While the deceased was intending to cross the road towards the Church the accident had occurred. It is obvious that when there is Church and mess on either side of road, it is the duty of the driver of the crime vehicle to go at a reasonable speed by watching carefully as to whether any pedestrian is walking. Therefore, the evidence of PW.2 clinchingly proved the fact that, at the time of accident, the crime lorry was coming at high speed, without blowing the horn. It is obvious that the lorry was driven at high speed, in a rash and negligent manner, though there is a Church and a mess, situated on either side of the road. There is possibility of the pedestrian walking, crossing the road at that place.

9. These facts clinchingly prove that there is no negligence, on the part of the pedestrian, while crossing the road to go to Church. These facts were not observed by the Tribunal while deciding the rash and negligent act in this case. On consideration of the evidence on record, this Court is of the view that there is no negligence on the part of the deceased. It is obvious that while crossing the road, the lorry came at high speed without blowing any horn and dashed against the deceased, without taking necessary pre-cautions as there were mess and Church on either side of the road, and there is possibility of people walking on the road. The nature of injuries mentioned in the postmortem report also clinchingly

proved the rash and negligence act on the part of the driver of the lorry. Therefore, I hold that there is no negligence on the part of the deceased.

10. In view of the facts and circumstances of the case, I hold the point in favour of the appellants that there is no contributory negligence on the part of the deceased and consequently, the 2nd respondent/Insurance Company is liable to pay the entire compensation to the appellants.

11. In the result, the appeal is partly allowed. The award dated 22.02.2006 passed in M.V.O.P.No.32 of 2005 on the file of Chairman, Motor Vehicle Accident Claims Tribunal-cum-IX Additional District Judge, Visakhapatnam is modified and the 2nd respondent is directed to deposit the total amount of Rs.1,85,000/-, with in two months including the amount already deposited. On such deposit the appellants are permitted to withdraw their share as fixed by the Tribunal. The rest of claim unaltered. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G.SHYAM PRASAD,J

03.01.2017
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