

THE HON'BLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No.701 of 2005

JUDGMENT:

The present appeal is filed challenging the order, dated 11.08.2004, in Original Petition No.328 of 2003 passed by the Motor Accidents Claims Tribunal (District Judge), West Godavari at Eluru (for short, 'the Tribunal').

2. Appellant herein is the 2nd respondent –Insurance Company, whereas the respondents 1 to 3 are the claimants and respondent No.4 is respondent No.1-owner of the crime vehicle, before the Tribunal. For the sake of convenience, parties hereinafter will be referred as petitioner and respondent, as they are arrayed in O.P.No.328 of 2003.

3. Brief facts of the case are that Gopala Krishna (deceased), who was aged about 25 years at the relevant point of time, was running a Photo Studio under the name and style as "Metro Studio" at Eluru. Thus, on 11.10.2002 at about 10:00 P.M., while the deceased and the 1st respondent were proceeding on a motorcycle bearing No.AP 37 AB 1904, belonging to the 1st respondent, driven by the deceased, when both reached near the railway gate at Vatluru Village at about 11:30 P.M., on seeing a quarry lorry coming in opposite direction driven by its driver in a rash and negligent manner without putting on any signal lights etc., the deceased took

a turn towards the backside of the Marimatha Statue road, but could not able to control the two wheeler driven by him and dashed to an electric pole, resulted his instantaneous death and the pillion rider - 1st respondent fell unconscious. The deceased being a photographer by profession used to earn an amount of Rs.1,500/- per month and also used to earn Rs.1,000/- through video coverage of private functions. Claimants 1 and 2 are the parents and claimant No.3 is brother of the deceased, and the total claim laid by him is Rs.2,00,000/-.

4. The Tribunal on appreciation of evidence on record, particularly, Ex.B.1-Insurance Policy of the crime vehicle, fastened the liability against the Insurance Company and granted compensation of Rs.98,500/-. Challenging the order passed by the tribunal fixing liability of payment of compensation against the Insurance Company, the present appeal is filed.

5. Heard both sides and perused the material on record.

6. The only ground urged by the appellant/Insurance Company to question the order of the Tribunal is that the deceased himself was responsible for occurrence of the accident and he being tort-feasor, the legal heirs of him are not entitled to get any compensation. It has placed the reliance on a decision rendered in

Ningamma and another v. United India Insurance Co. Ltd¹,
in support of above mentioned contentions.

7. The contention of the claimants is that while the deceased was proceeding on a motorcycle from old bus-stand along with another; in the process of averting the hitting of the motorcycle by the opposite lorry, which was driven negligently without putting signal lights etc., the motorcycle was hit to a road side electric pole. Though said fact was spoken by PW.2, the same was not believed by the Tribunal on the ground that the above mentioned particulars deposed by PW.2, were not mentioned in the First Information Report. The claimants' contention from the beginning was that when an attempt was made by the deceased to avoid hitting of the motorcycle driven by him by the opposite coming lorry, the motorcycle was hit to a road side electric pole. Because of non-mentioning of the above mentioned particulars, the Tribunal came to the conclusion that the accident was caused by the deceased himself and that he himself was at fault. The 1st respondent himself was travelling along with the deceased at the relevant point of time as per the assertion made in the petition. Since he was made as party to the present proceedings, he was not examined. These were the contentions raised by the learned counsel for the claimants during the course of making his submissions.

¹ 2009 ACJ 2020

8. The 1st respondent i.e., owner of the motorcycle had not contested the case. The case was contested only by the insurer of the motorcycle. Its main contention was that since the deceased himself was responsible occurrence of the accident, his legal heirs are not entitled to get any compensation as rendered in the case law cited by the appellant.

9. The motorcycle was not borrowed by the deceased from the vehicle owner. The vehicle owner himself instructed the deceased to ride the motorcycle in his supervision and after the deceased was authorized by the owner to drive his vehicle, he drove it. The policy taken for the vehicle by its owner was a comprehensive policy, where the risk of rider and pillion rider was covered. The Tribunal, on appreciation of the above mentioned aspects and on thorough appreciation of the contents of the policy, fastened the liability as against the insurance company, which agreed to indemnify the liability of the insured in case of occurrence of accident etc., and awarded compensation of Rs.81,000/- under the head of loss of contribution of income of the deceased upon consideration of the income of the deceased at Rs.1,500/- per month and odd and on applying the multiplier '9' and taking into consideration the age of his mother etc., by awarding some money under various other heads such as loss of income, loss of love and affection.

10. The Tribunal on appreciation of the entire evidence on record in a proper perspective, has passed the award by ordering for payment of compensation of Rs.98,500/- with proportionate costs and interest @9% per annum. Since the 3rd claimant is an employee and not the dependant of deceased, the tribunal has rightly ordered apportionment of compensation equally among the claimants 1 and 2, who are parents of the deceased. This Court has not noticed any substantial material to hold that the Tribunal is at fault in fastening the liability against the Insurance Company and to set aside the impugned order. In view of the above, this Court finds that the appeal is devoid of any merits and deserves to be dismissed.

11. Accordingly, the appeal is dismissed. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

JUSTICE J.UMA DEVI

Date: 07.04.2017
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