

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 555 of 2009

JUDGMENT:

1. The appellant/New India Assurance Company Limited aggrieved by the Award and Decree dated 13.07.1998 passed in OP.No.393 of 1994 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Guntur, preferred this appeal mainly on the grounds that since there is no liability under the head of 'No fault liability' as proposed under Section 166 of MV Act, the Insurance Company is not liable to pay compensation under Section 140 of the MV Act and that the owner and driver alone are liable to pay compensation, if any.

2. On the other hand, learned Counsel for Respondents 1 to 3/claimants submits that the Tribunal rightly awarded compensation of Rs.1,00,000/- under 'no fault liability' payable by appellant and respondents 4 to 6 with interest at 12% per annum and that there are no legal and valid grounds to interfere with the Award of the Tribunal.

3. Brief case of respondents 1 to 3/claimants is that on 11.06.1994 at about 6.00 AM while the husband of first respondent/first claimant, who is the father of respondents 2 and 3/Claimsnts 2 & 3, by name Shaik Buda, alias Chuvva, was coming in lorry bearing No. AP 03 U 79 along with Neredu fruits as owner of the goods, and when the said lorry reached

Gaddipunnarao dying unit on N.H.No.5, the driver drove the said lorry in rash and negligent manner and hit another lorry which was coming in opposite direction. Both the lorries collided, due to which, both the lorries were damaged. In the said accident, the deceased-Shaik Buda and another person were crushed in between the said lorries and died on the spot.

4. The Tribunal having considered the pleadings of both the parties, framed the following issues for settlement.

1. Whether the deceased died in the accident due to the rash and negligent driving of the two lorries bearing Nos. AP 03U 79 and AAP 963 by its drivers?
2. To what compensation amount the petitioners are entitled to and against whom?
3. To what order?

5. In order to prove the respective claims, on behalf of respondents 1 to 3/Claimants, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were got marked. On behalf of appellant and respondents 4 to 6, R.W.1 was examined and Ex.B.1 was got marked.

6. The evidence of P.Ws.1 and 2 and documentary evidence at Ex. A.1-FIR, Ex. A.2-Charge sheet and Ex.A.5-MVI report goes to suggest that there is no dispute with regard to collusion that took place between two lorries bearing Nos. AP 03U 79 and AAP 963 on 11.06.1994 at about 6.00 AM near Gaddi Punna Rao dying unit on N.H.5-by-pass road, Mangalagiri. The

Tribunal also considered the nature of the accident and observed that Rule 2 of the Rules of Road Regulations, 1989 postulates that the driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient and shall allow all traffic which is proceeding in the opposite direction to pass on his right hand side, has been followed by both the drivers of the lorries bearing Nos. AP 03U 79 and AAP 963, the accident would have been averted. When a driver of vehicle finds that another vehicle is approaching from opposite direction, he has to slow down the vehicle at a safer speed to keep it under control and has to leave sufficient space for other vehicle for crossing.

7. P.W.2 was the eye witness to the accident, who was travelling in the lorry bearing No. AP 03U 79 along with the deceased after loading 30 bags of Neredu fruits. According to evidence of P.W.2, the lorry which was coming in apposite direction, while overtaking another lorry, came to the wrong side and dashed the lorry in which he was travelling. According to him, the accident took place due to rash and negligent driving of lorry bearing No. AAP 963 by its driver. P.W.2 was cited as eye witness to the accident in Ex. A.2-charge sheet. Ex. A.1-FIR was at the instance of complaint lodged by the driver of lorry No.AAP 963, according to which, the lorry bearing No.AP 03U 79 came in opposite direction and dashed lorry bearing No. AAP 963. Even though informant of FIR was not examined, the fact remains that

there is collusion between aforesaid two lorries. The police registered FIR-Ex.A.1 against the driver of lorry bearing No. AP 03U 79 and filed charge sheet which was numbered as CC No. 223 of 1994.

8. Further, the Tribunal observed that simply because the police filed charge sheet against the driver of lorry AP 03 U 79 it does not mean that the accident had taken place only due to the negligent driving of the driver of the said lorry.

9. The evidence of P.W.2 that while lorry bearing No. AAP 963 was over taking another lorry came to the extreme right side and dashed the lorry bearing No. AP 03 U 79 in which he was travelling is not supported by the charge sheet, Ex. A.2. Therefore the Tribunal was right in not accepting the evidence of P.W.2.

10. P.W.2 also did not say whether the drivers of both the vehicles blew horn and gave any light signals or otherwise indicated the approaching of vehicle to keep away more to the left while crossing. Ex. A.2 is the certified copy of MVI report which goes to suggest that at the accident spot, the width of the road was 24 feet with margin of four feet on either side and it was a straight road. Therefore the opposite vehicle would be visible to the other driver from a long distance. If both the drivers had taken

any slight precaution, the accident would have been averted. Considering the evidence on record and in the absence of rebuttal evidence from the side of appellant and respondents 4 to 6 herein, the Tribunal found that both the drivers were rash and negligent and it was a case of contributory negligence on the part of both the drivers.

11. P.W.1 further deposed that she is the wife of deceased whereas claimants 2 and 3/respondents 2 and 3 herein are daughters of the deceased-Shaik Buda alias Chuvva. The relationship between the respondents 1 to 3/claimants 1 to 3 and the deceased is not disputed by the appellant or by respondents 4 to 6 by cross examining P.W.1.

12. The evidence of P.W.1 is that her husband was doing fruit business and used to give her Rs.1500/- for maintaining family. P.W.2 who was also one of the fruit vendors has deposed that himself and deceased went to Rajahmundry to purchase Neredu fruits and while they were coming to Chilakaluripet, the accident took place.

13. The Tribunal having considered the corroborative evidence of P.Ws.1 and 2 observed that the deceased used to earn Rs.50/- per day since P.W.1 deposed that her husband used to give her Rs.1500/- per month for maintaining family. However,

in the absence of evidence in regard to investment made by the deceased, the Tribunal rightly assessed the monthly income of the deceased at Rs.1000/- per month, since even a cooli would earn not less than Rs.30/- per day. The Tribunal after deducting 1/3<sup>rd</sup> of earnings towards his personal expenses had he been alive, assessed the contribution to his family at Rs.700/- per month. The age of the deceased was noted as 42 years in Ex. A.4-Posrt Mortem certificate as well as Ex. A.2-charge sheet. Based on the same, the Tribunal took the age of the deceased as 42 years as on the date of accident and applied the applicable multiplier '12' and assessed the loss of dependency at Rs.1,00,000/-. Besides the same, the Tribunal also awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium to P.W.1/Claimant No.1.

14. Thus the Tribunal assessed the compensation payable to respondents 1 to 3/Claimants 1 to 3 at Rs.1,30,000/- under the head of no fault liability. However, as the claimants claimed only Rs.1,00,000/-, the Tribunal restricted their claim at Rs.1,00,000/- by directing respondents 5 and 6 jointly and severally to pay Rs.50,000/-; directing the fourth respondent to pay Rs.25,000/-; and further directing the appellant to pay Rs.25,000/- with interest at 12% per annum from the date of petition i.e. 20.06.1994 till the date of deposit.

15. Learned Counsel for the appellant-New India Assurance Company Limited submits that the interest awarded by the Tribunal at 12% per annum is excessive. It is to be seen that award of interest would normally depend upon the bank rate prevailing at the relevant time. Having considered the bank rate of interest, the interest awarded by the Tribunal at 12% per annum is set aside and modified by awarding interest at 7.5% per annum from the date of petition i.e. 20.06..1994 till the date of deposit. In all other aspects, the award and decree passed by the Tribunal is confirmed.

16. For the foregoing discussion and in the result, the appeal is partly allowed with proportion costs by setting aside and modifying the the Award and Decree dated 13.07.1998 passed in OP.No.393 of 1994 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Guntur to the extent indicated hereinabove.

17. The appellant and respondents 4 to 6 are directed to deposit the compensation as directed by the Tribunal within a period of 30 days from the date of receipt of a copy of this Award after adjusting the amount if any already paid/deposited.

18. On such deposit or if the compensation amount is already kept in any Nationalized Bank under fixed deposit as

directed by the Tribunal, the respondents 1 to 3/claimants are permitted to withdraw their respective share amounts as apportioned in the Award, by filing appropriate application before the Tribunal.

19. Advocate fee is fixed at Rs.2,000/-

20. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

DATED 11<sup>th</sup> October, 2017.  
Msnr<sub>x</sub>



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**JUSTICE N. BALAYOGI**