

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1947 OF 2005

AND

M.A.C.M.A. No.432 OF 2006

COMMON JUDGMENT:

1. Both these Appeals, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), are separately filed by the appellants *i.e.*, petitioners and 2nd respondent-insurer, aggrieved by the order dated 28.06.2005 passed in O.P. No.349 of 2004 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-I Additional District and Sessions Judge Medak at Sangareddy (for short, 'the Tribunal') insofar as the quantum of compensation is concerned.

2. Appellants in M.A.C.M.A. No.1947 of 2005 are the petitioners; appellant in M.A.C.M.A. No.432 of 2006 is the 2nd respondent-insurer of Lorry bearing registration No.MH-17-A-8544 (For short, 'the crime vehicle').

3. For convenience of reference, the parties hereinafter are referred to as they were arrayed before the Tribunal.

4. Heard Sri P.Sriharinath, learned counsel for the petitioners, Sri T.Narsi Reddy, learned standing counsel for the 2nd respondent-insurer and perused the record. The Appeal against the 1st respondent, owner of the crime vehicle was dismissed for default *vide* orders of the Court on 04.01.2012 and 14.07.2016 respectively.

5. The case of the petitioners, in brief, is that on 09.03.2004, when Abdul Rahoof (hereinafter referred to as 'the deceased') and

Gaddam Nageshwar Rao, who are the greengrocers, boarded the crime vehicle with their vegetable loads at Manoharabad village to unload the same at Nizamabad and when the crime vehicle reached Narsingi village, the driver of the crime vehicle drove the same at high speed in a rash and negligent manner and, unable to control the same, went wrong side and hit a tree. As a result of which, Gaddam Nageshwar Rao died on the spot and the deceased, who sustained head injury, succumbed to the injuries while undergoing treatment in a hospital. The Chegunta Police registered a case in Crime No.36 of 2004 for the offences under Sections 337 and 304-A I.P.C. against the driver of crime vehicle. Prior to the accident the deceased was aged 33 years, hale and healthy, earning an amount of Rs.6,000/- by vending vegetables, sole breadwinner for his family consisting of five members. Due to the untimely death of the deceased, the 1st petitioner, who happened to be the wife, lost her future marital life; 2nd and 3rd petitioners, who happened to be the minor children, lost their love and affection and future prospects; 4th and 5th petitioners, who happened to be the aged parents of the deceased, lost theory love and affection and support at their old age, filed the petition against the respondents 1 and 2, who are the owner and insurer of crime vehicle, claiming compensation of Rs.3,50,000/-.

6. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

7. Respondent No.2, insurer of the crime vehicle, filed counter denying the material allegations of the petition *inter-alia* contending

that manner of the accident, age, occupation and earnings of the deceased be put to strict proof of the same. It was further contended therein that the driver, who drove the crime vehicle at the time of accident, did not possess valid driving license and the 1st respondent-owner of the crime vehicle also failed to inform the accident and finally contended that the compensation claimed is excessive and exorbitant, sought for dismissal of the petition.

8. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, R.W.1, the documents Exs.A.1 to A.6 and Ex.B.1 to B.4, awarded the compensation of Rs.2,62,000/- (*i.e.*, Rs.2,52,000/- towards loss of earnings, Rs.5,000/- to the 1st petitioner towards consortium, Rs.5,000/- towards loss of estate) in favour of the petitioners and directed that the respondents 1 and 2 to pay jointly and severally with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

9. The petitioners filed M.A.C.M.A. No.1947 of 2005 contending that the Tribunal has granted meagre compensation of Rs.2,62,000/- against the claim of Rs.3,50,000/-; the deceased was vegetable vendor, he used to carry vegetables from one place to other place for sale; in that process, he met with an accident and died; he was 33 years old, hale and healthy and earning Rs.6,000/- per month; the Tribunal had wrongly taken his income as Rs.2,100/- per month and the age as 40 years and granted lesser compensation towards loss of life of dependency and granted Rs.5,000/- towards loss of consortium and another Rs.5,000/- towards loss of estate, which are meagre; in total, granted a compensation of Rs.2,62,000/- against

the claim of Rs.3,50,000/-; and ultimately, prayed to enhance the compensation.

10. The 2nd respondent-insurer filed M.A.C.M.A. No.432 of 2006, wherein it is contended that the deceased was an un-authorised passenger in a goods vehicle; in spite of the decisions of the Hon'ble Apex Court rendered in ***National Insurance Company Limited Vs. Bommithi Subbayamma***¹ and ***New India Assurance Company Limited Vs. Asha Rani and others***², the Tribunal wrongly fastened liability on 2nd respondent-insurer; there is no evidence to believe that the deceased was the owner of the goods and transporting the goods at the time of the accident; the finding of the Tribunal that the deceased was a owner, travelling with the goods is perverse; and ultimately, prayed to dismiss the claim against 2nd respondent-insurer.

11. Both the learned counsel appearing on behalf of the appellants have supported the averments of their respective appeals. There is no representation on behalf of the 1st respondent-owner of the crime vehicle.

12. In view of the submissions made, the following points have come up for determination:

1. Whether the claimants are entitled for enhancement of compensation from Rs.2,62,000/- to Rs.3,50,000/- as claimed?

¹ 2005 ACJ 721

² 2003 ACJ 1

2. Whether the claim against respondent No.2-insurer is liable to be dismissed?

13. **POINTS:** The specific case of the petitioners is that the deceased was 33 years old. He was a vegetable vendor, carrying vegetables for sale in the lorry bearing No.MH 17A 8544 and earning Rs.6,000/- per month. When the lorry was proceeding towards Nizamabad on National Highway No.7 and when it reached the limits of Narsingi, the driver of the lorry drove the lorry in a rash and negligent manner, failed to control the lorry and hit to a road side tree. Due to which, the deceased-Abdul Rahoof received injuries and while undergoing treatment, succumbed to injuries. The contention of 2nd respondent-insurer is that the lorry bearing No.MH 17A 8544 though insured with 2nd respondent-insurer, the deceased was not carrying vegetables in the lorry, he was a gratuitous passenger and the Tribunal wrongly fastened the liability against 2nd respondent-insurer.

14. To substantiate the contentions on behalf of the petitioners, P.Ws.1 and 2 were examined; Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of charge sheet, Ex.A.3-certified copy of post-mortem examination report, Ex.A.4-certified copy of M.V.I. Report, Ex.A.5-certified copy of inquest report and Ex.A.6-certified copy of scene of offence panchanama were marked. On behalf of 2nd respondent-insurer, its employee was examined as R.W.1 and Ex.B.1-copy of the insurance policy, Ex.B.2-investigation report, Ex.B.3-cover returned by respondent No.1 and Ex.B.4-letter dated 14.10.2004 issued by the investigator were marked. P.W.1 is the mother of the

deceased. She deposed about the death of the deceased. P.W.2 deposed about the occurrence of the accident and death of a person on the spot and one Muslim person receiving injuries in that accident. P.W.2 also stated in his evidence that the lorry was loaded with vegetables. There is also evidence of P.W.2 that the accident occurred due to rash and negligent driving of the lorry driver. Ex.A.1-certified copy of F.I.R. reveals that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.MH 17A 8544. Ex.A.2 is the certified copy of charge sheet, wherein there is mention of occurrence of the accident. Ex.A.3 is the certified copy of post-mortem examination report relates to the death of the deceased. Ex.A.5 is the certified copy of the inquest report of deceased. Ex.A.6 is the certified copy of scene of offence panchanama. All these documents are corroborated with the evidence of P.Ws.1 and 2. Therefore, it can be safely concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.MH 17A 8544. The Tribunal had rightly decided the same. There is nothing to take a different view.

15. As per the evidence of R.W.1, the deceased was unauthorised passenger in the lorry. As per Ex.B.2-investigators report, the lorry driver was not having valid driving licence. A letter was addressed to 1st respondent, it was refused. Ex.B.3 is the returned cover. Ex.B.1 is the copy of insurance policy. R.W.1 admitted in his evidence that the deceased was travelling with vegetables. There is an admission of R.W.1 that the deceased was travelling with vegetables and there is also specific evidence of P.W.2-eyewitness that the deceased was

travelling with vegetables. There is specific mention in Ex.A.6-certified copy of the scene of offence panahanama that there were vegetables in the lorry. Ex.A-1 shows that the deceased along with G.Nageshwar Rao was transporting vegetables in the crime lorry. As per Ex.A.2-certified copy of charge sheet also, the deceased and another who also died in the same accident, were doing vegetable business, loaded vegetables in the lorry and were travelling by the same lorry at the time of occurrence of accident. Therefore, it cannot be said that the deceased was an unauthorised passenger in the goods vehicle. As per Ex.A.2-certified copy of charge sheet, the driver of the lorry was prosecuted for the offences under Sections 304-A and 338 I.P.C. The driver was not prosecuted for not possessing driving licence. The investigator appointed by the insurer is not examined. Therefore, it cannot be said that the driver had no valid driving licence at the time of accident. The Tribunal placed reliance on the ocular and documentary evidence and held the same. No different view can be taken.

16. Now the point remains is, whether the petitioners are entitled for enhancement of compensation?

17. As per Ex.A.3-certified copy of post-mortem examination report, the deceased was 30 years old. The Tribunal had taken the multiplier '15' and monthly income of the deceased as Rs.2,100/-, deducted 1/3rd towards his personal expenses and granted Rs.2,52,000/- towards loss of dependency. The same is based on the evidence on record. There is nothing to take a different view. The Tribunal granted Rs.5,000/- towards loss of consortium,

whereas the petitioners have claimed Rs.15,000/- under the same head. So, it is enhanced to Rs.15,000/-. The Tribunal has granted Rs.5,000/- towards loss of estate. The same is also enhanced to Rs.15,000/-. In all, the compensation payable to the petitioners comes to Rs.2,82,000/- as against Rs.2,62,000/- granted by the Tribunal. The claimants are entitled for the same with interest at 7.5% per annum from the date of petition till realisation. Both the points are answered accordingly.

18. In the result, the appeal filed by the insurer, *i.e.*, M.A.C.M.A. No.432 of 2006, is dismissed and the appeal filed by the petitioners, *i.e.*, M.A.C.M.A. No.1947 of 2005 is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.2,62,000/- to Rs.2,82,000/- with interest at the rate of 7.5% p.a. from the date of filing of petition till the date of deposit in Court. The 1st petitioner (wife of the deceased) is entitled to receive the entire enhanced compensation and on deposit, she is permitted to withdraw the same. No other petitioner is entitled to any share in the enhanced compensation. The other conditions imposed by the Tribunal remain unchanged.

19. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 20.10.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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