

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1307 OF 2006

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant-insurer, aggrieved by the order dated 16.03.2006, passed in O.P. No.1054 of 2003, by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-V Additional District and Sessions Judge, Nalgonda at Miryalguda (for short, 'the Tribunal'); wherein the Tribunal awarded the compensation of Rs.2,56,500/-, against the original claim of Rs.3,00,000/-, with interest at the rate of 7.5% p.a. from the date of petition till realization, making Respondents 1 to 3 jointly and severally liable to pay the compensation.

2. Appellant herein is the 2nd respondent, insurer of the Auto rickshaw bearing registration No.AP-24U-9585 (for short, 'the auto'), 4th respondent herein is the 1st respondent-owner of the auto, 5th respondent herein is the 3rd respondent, who was impleaded as per the orders in I.A. No.406 of 2005, dated 06.09.2005, and Respondents 1 to 3 herein are the petitioners, who filed the petition before the Tribunal, under Section 166 read with Section 140 of the Act, claiming compensation of Rs.3,00,000/- on account of the death of Nulka Hanmi Reddy, (hereinafter referred to as 'the deceased'), who happened to be the husband of 1st petitioner and father of petitioners 2 and 3, in a motor vehicle accident occurred on 28.05.2003.

3. The parties hereinafter are referred to as arrayed before the Tribunal.

4. The case of the petitioners, in brief, is that on 28.05.2003 at about 05:30 p.m., when the deceased, along with other persons, was travelling

by the auto from Kothaluru village in order to go to Haliya, on his personal work, by paying hire as passenger, and when the said auto reached the outskirts near Sai Halo Bricks, the driver of the auto drove it in a rash and negligent manner, at high speed, and in the meantime, one cyclist came on the road, in the process of crossing him, unable to control the auto and as such it turned turtle on the road, as a result of which, the deceased sustained grievous injuries along with other passengers. On 29.05.2003 at about 07:30 p.m., while shifting the deceased to a private hospital in Miryalaguda, he succumbed to injuries. A case in Crime No.41 of 2003, for the offences punishable under Sections 337, 338 and 304-A I.P.C., was registered against the driver of the said auto. The petitioners averred in the petition that the deceased was aged 46 years and doing agriculture and milk business and earning Rs.4,000/- per month, contributing the same to his family members, and due to the accident, they lost the sole bread earner; therefore, they sought Rs.3,00,000/- as compensation from respondent Nos.1 to 3.

5. Respondent Nos.1 and 3 remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the auto, filed counter before the Tribunal, denying all the allegations mentioned in the claim petition and contended that the driver of the auto was not having valid and subsisting driving licence at the time of accident and it is not liable to pay any compensation to the petitioners and, finally, prayed to dismiss the petition.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2 and R.W.1, and the documents Exs.A.1 to A.10 and Ex.B.1, granted compensation of Rs.2,56,500/- with interest at the rate of 7.5% per annum from the date of petition till realisation against respondent

Nos.1 to 3. Aggrieved by the impugned order, 2nd respondent, insurer of the auto, preferred the present appeal.

8. Heard the arguments learned standing counsel for the appellant-insurer and the learned counsel appearing on behalf of respondent Nos.1 to 3 herein, who are the petitioners in the original petition, and perused the material available on record. The appeal against respondent No.4-owner of the auto was dismissed for default *vide* order of this Court on 28.06.2016. Though served with notice, none entered appearance on behalf of 5th respondent herein.

9. Learned standing counsel appearing on behalf of the appellant-insurer submitted that the findings of the Tribunal are contrary to law and facts. The Tribunal has taken Rs.2,500/- p.m. as income of the deceased, which is excessive; the auto, as on the date of accident, was overcrowded with passengers. As per the terms and conditions of the copy of insurance policy, Ex.B-1, seating capacity in the auto is 3 + 1 but there were 6 passengers in the auto at the time of accident. The driver and owner of the auto have violated the terms and conditions of the insurance policy, Ex.B-1. In these circumstances, the Tribunal ought not have directed the appellant-2nd respondent-insurer to pay the compensation of Rs.2,56,500/- to the petitioners and then recover it from the respondent Nos.1 and 3 and, ultimately, prayed to allow this Appeal setting-aside the direction, in so far as pay and recover, against the appellant-2nd respondent is concerned.

10. Learned counsel appearing on behalf of the respondents-petitioners contended that the deceased was 43 years old having wife and children earning Rs.4,000/- p.m. by doing milk business. The Tribunal has granted just and reasonable compensation; there are violations of terms

and conditions of insurance policy and ultimately prayed to retain the order under appeal.

11. In view of the rival contentions raised on behalf of both the counsel, the following points have come up for determination:

- 1) Whether the compensation awarded is liable to be reduced?
- 2) Whether the order under Appeal is liable to be set-aside against the appellant-respondent?
- 3) To what result?

12. **POINT No.1:** In the instant case on hand, the deceased namely Nulka Hanmi Reddy, aged 46 years, stated to be doing milk vending business and earning Rs.4,500/- p.m., died in a motor accident occurred on 28.05.2003, due to the rash and negligent driving of the driver of the auto. The claim petitioners are his wife and children. There is oral evidence of P.W.1, wife of the deceased and P.W.2, eye witness to the accident, who clearly and categorically deposed about the rash and negligent driving of the driver of the auto. Ex.A-1 is the certified copy of F.I.R. in Crime No.41 of 2003; Ex.A-2 is the certified copy of inquest report; Ex.A-3 is the certified copy of post-mortem examination report of the deceased; Ex.A-4 is the certified copy of Motor Vehicle Inspectors report; Ex.A-5 is the certified copy of charge sheet, which clinchingly establishes the rashness and negligence on the part of the driver of the auto in causing the death of Nulka Hanmi Reddy. Further, as per Ex.A-4, there was no mechanical defect in the auto. Hence, no other finding can be substituted.

13. **POINT Nos.2 and 3:** Both these points go together. Ex.A-6 is the driving license of the driver of the auto; Ex.A-7 is the original pattadar pass book issued by the M.R.O.; Ex.A-8 is the original title deed issued by the R.D.O.; Ex.A-9 is the certified copy of pahani for the year 2002-03 and Ex.A-10 is the original un-registered sale deed dated 05.04.2000; these documents clearly establish the agricultural land owned and possessed by the deceased and his family. There is nothing to doubt those documents coupled with the evidence of P.W.1. While dealing with the issue of awarding compensation, the Tribunal had taken monthly income of the deceased at Rs.2,500/-, deducted 1/3rd towards his personal expenses, applied multiplier '11' applicable to the age group of deceased as 50 years, relying on EXs.A-2 and A-3, inquest and post-mortem examination reports of the deceased, and granted compensation of Rs.2,20,000/- towards loss of dependency, Rs.2,000/- towards transportation expenses, Rs.2,000/- towards medical expenses; Rs.500/- towards damages to clothing; Rs.2,000/- towards obsequies of the deceased, Rs.15,000/- towards loss of estate and awarded an amount of Rs.15,000/- to the 1st petitioner towards loss of consortium. In all, the Tribunal granted a compensation of Rs.2,56,500/- with interest at the rate of 7.5% p.a. from the date of petition till realization, which finding is based on ample evidence on record. No other finding can be substituted on this score.

14. There is evidence of R.W.1, senior assistant working in the office of appellant-insurer, who deposed about the auto being overcrowded and as such the driver and owner violating the terms and conditions of Ex.B-1, insurance policy. No driving license of the auto driver is filed. As per the oral and documentary evidence, the seating capacity of auto is 3 + 1 only, but the auto was overcrowded at the time of accident. It can be safely concluded that the driver and owner of the auto have violated the terms and

conditions of Ex.B-1, insurance policy. While dealing with this issue, the Tribunal ultimately directed the appellant-insurer to pay the compensation awarded to the petitioners and then recover the same from the respondents 1 and 3. As seen from the evidence on record, there is no infirmity in the order under Appeal. There is nothing to take a different view and substitute another finding.

15. Hence, in view of the facts and circumstances, the Appeal is dismissed confirming the impugned order. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

Date: 07.04.2017.
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Dr. SHAMEEM AKTHER, J



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