

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.511 OF 2007

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellants, who are the petitioners in M.V.O.P. No.220 of 2003, laid under Section 166(1)(C) of the Act, on the file of the Chairperson, Motor Accidents Claims Tribunal-cum-District Judge at Nizamabad (for short, 'the Tribunal'), aggrieved by the order dated 21.06.2006, whereby the Tribunal while granting compensation of Rs.4,59,500/-, against the original claim of Rs.10,00,000/-, for the death of Talari Laxman (Hereinafter referred to as 'the deceased') in a motor accident occurred on 09.12.2001, directed both the respondents jointly and severally liable to pay the same with interest at the rate of 7.5% p.a. from the date of petition till realization.

2. Appellants herein are the petitioners and legal heirs of deceased Talari Laxman; 1st respondent herein is the owner of Lorry bearing registration No.MP-08/D-1404 (For short, 'the crime vehicle') and 2nd respondent herein is its insurer.

3. Heard the learned counsel for the appellants-petitioners and perused the record. In spite of service of notice on behalf of the 2nd respondent-insurer, none entered appearance and there is no representation on its behalf.

4. The case of the petitioners, in brief, is that on 09.12.2001, at about 10-00 p.m., when the deceased, as pillion rider, along with one K. Sudhakar, as rider, was travelling by the motorcycle bearing registration No.AP-25/A-6162 and when they reached Bussapoor sub-station, the crime vehicle, being driven by its rider in a rash and negligent manner,

came from Balkonda side hit the motorcycle of the deceased, as a result of which, the deceased fell down and the crime vehicle ran over the deceased resulting in the instantaneous death of Talari Laxman. Prior to the accident, the deceased was hale and healthy, doing dish antenna cable work business including vegetable business and agriculture, aged 26 years, and earning Rs.30,000/- p.m. The petitioners, who lost their sole bread-winner, lost his love and affection, suffered irreparable loss and mental agony due to the sudden and untimely death of Talari Laxman, hence, claimed compensation of Rs.10,00,000/- against both the respondents.

5. Respondent No.1-owner of the crime vehicle filed counter denying material allegations of the petition *inter-alia* contending that manner of the accident, age and occupation of the deceased be put to strict proof of the same. It was further contended that there was no rash and negligence on the part of the driver of crime vehicle; as there is valid insurance on the date of accident, 2nd respondent alone is liable to pay the compensation and, finally, contended that the compensation claimed is highly excessive and exorbitant, sought for dismissal of the petition.

6. Respondent No.2-insurer of the crime vehicle filed counter, denying all the averments mentioned in the claim petition and contended that the accident occurred due to the rash and negligent driving of the motorcycle and, hence, its owner and insurer are necessary parties to the petition; as on the date of accident, three persons were travelling by the motorcycle, which is against the Act and Rules and, hence, there is contributory negligence on the part of the deceased; further contended that the crime vehicle was not in fit condition and the driver of crime vehicle had no valid and effective driving license and, hence, 2nd respondent is not liable to pay compensation and, finally, contended that

the compensation claimed is baseless, highly excessive and exorbitant, sought for dismissal of the petition.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.11 and Ex.B.1, initially awarded the compensation of Rs.9,19,000/- (*i.e.*, Rs.8,64,000/- towards loss of dependency, Rs.50,000/- towards loss of love and affection, loss of consortium, loss of estate and pain and suffering and Rs.5,000/- towards transportation) and deducted half of Rs.9,19,000/- towards contributory negligence of the deceased and as such directed the remaining half *i.e.*, Rs.4,59,500/- be jointly and severally paid by both the respondents with interest at the rate of 7.5% p.a. from the date of petition till realization.

8. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default on 05.07.2016. However, absence of 1st respondent-owner of the crime vehicle is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench decision of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it was held as follows:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners,

¹ 2001 (1) ALT 495 (D.B.)

but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

9. Now the points that arise for determination are:

(1) Whether the accident occurred due to rash and negligent driving of the driver of the tipper bearing No.MP-08/D-1404 or the rider of the motorcycle by which the deceased was travelling as a pillion rider at the time of the accident or both?

(2) Whether the appellants are entitled for enhancement of compensation?

10. **POINT No.1:** P.W.1, who is wife of the deceased in this case, admitted that in the report lodged with the police, it was mentioned that there were two other persons travelling by the motorcycle along with her husband (deceased in this case) at the time of occurrence of the accident. P.W.3-Jadhav Gangadhar, who is cited as L.W.7 in the charge sheet marked as Ex.A.2, categorically deposed that on 09.12.2001, the deceased and two other persons were sitting on the motorcycle and were proceeding, however, he stated that the accident occurred due to rash and negligent driving of the driver of the tipper bearing No.MP-08/D-1404 and the tipper dashed the motorcyclist in opposite direction. Ex.A.1-photocopy of F.I.R. and Ex.A.2-photocopy of charge sheet corroborates with the evidence of P.Ws.1 and 3. There is no doubt that three persons including the deceased were travelling by the motorcycle and the motorcycle collided with the tipper. The triple riding is not permissible under law. Merely because the tipper bearing No.MP-08/D-1404 is a heavy vehicle and the report was lodged against the driver of the tipper and the driver of the tipper was charge sheeted, it cannot be held that the driver of the tipper is solely responsible for occurrence of the accident. This petition is filed under Section 166(1)(c) of the Act claiming compensation on account

of rash and negligent driving of the tipper. The burden is on the petitioners to prove the same. As per Ex.A.3-photocopy of the inquest panchanama, it was conducted in the mortuary of Government Hospital. Admittedly, no person was examined on behalf of the 2nd respondent-insurer. It is not a ground, in the given circumstances, to hold that the accident occurred due to rash and negligent driving of the driver of the tipper (lorry) alone. The Tribunal, while analysing the entire evidence on record, held that the motorcyclist and the driver of the tipper are equally responsible for occurring of the accident. The finding is based on record and there is nothing to disturb the same.

11. **POINT No.2:** So far as the quantum of compensation is concerned, the Tribunal had taken suitable multiplier and the correct earnings of the deceased and assessed compensation payable to the petitioners as Rs.9,19,000/- and ultimately, deducted 50% of the same for the contributory negligence on the part of the rider of the motorcycle and awarded Rs.4,59,500/- towards compensation in favour of the petitioners. There is no infirmity in this regard, as the finding of the Tribunal is based on the evidence on record. There are no circumstances or legally acceptable evidence to enhance the compensation. Therefore, the appeal is devoid of merits and is liable to be dismissed.

12. In the result, the Appeal is dismissed, confirming the order dated 21.06.2006 passed by the Tribunal in O.P. No.220 of 2003.

13. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 04.08.2017.

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