

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A. No. 1667 of 2006

JUDGMENT:

This appeal is arising out of the order dated 27.01.2006 passed in O.P.No.93 of 2002 on the file of the Motor Accidents Claims Tribunal (Before the VI Additional District Judge (Fast Track Court)), Anantapur, at Gooty, (for short, 'the Tribunal').

2. Brief facts of the case are that on 25.10.2001, the deceased, who was working as Hamali in Nirmala Stone Polishing Factory situated in Chukkaluru, was going in a lorry bearing No.AP-21-O-3495, at about 2:00 AM, the driver drove the lorry in a rash and negligent manner, at a high speed, due to which the lorry turned turtle. As a result, the deceased died instantaneously. Alleging that the deceased died due to the rash and negligent driving by the driver of the lorry, the petitioner, who is the mother of the deceased, filed the claim petition seeking compensation of Rs.1,00,000/- against respondents No.1 and 2, the owner and the Insurer, of the crime lorry.

3. The Tribunal, vide the impugned order, dismissed the original petition. Aggrieved by the impugned order of dismissal of the claim petition, the appellant-claimant preferred this appeal.

4. The point for consideration is whether the order passed by the Tribunal dismissing the O.P., is illegal and perverse.

5. Heard the arguments of both the learned counsel.

6. Learned counsel for the appellant-claimant submitted that the Tribunal failed to observe that the vehicle bearing Registration No.AP-21-U-

3495 was involved in the accident, and the 2nd respondent-Insurance company has also not disputed the involvement of the said vehicle in the accident. Learned counsel for the appellant contended that the Tribunal has dismissed the OP on the ground that the deceased was not traveling in the vehicle bearing No.AP-21-U-3495. Learned counsel contended that PWs.1 and 2 have clearly deposed about the involvement of lorry bearing No.AP-21-U-3495 in the accident. Learned counsel further contended that the registration number of the crime vehicle was wrongly mentioned in the petition as AP-21-OO3495 instead of AP-21-U-3495, and that it was a typographical error, and therefore, sought for setting aside the order passed by the Tribunal.

7. PW1 in his chief affidavit mentioned the lorry number as AP-21-U-3495. PW2 also mentioned in his chief affidavit the lorry number as AP-21-U-3495. In Ex.A1-Certified copy of the F.I.R., Ex.A2-Certified copy of the Inquest, Ex.A3-Certified copy of the postmortem certificate, and Ex.B1-Endorsement of Insurance policy, the registration number of the crime vehicle was mentioned as AP-21-U-3495.

8. On consideration of the documents filed before the Tribunal, it clearly reveals that, except in the claim petition, in all other documents i.e., Chief Affidavits of PWs.1 and 2, and Exs.A1, A2, A3 and Ex.B1, the registration number of the crime vehicle was mentioned as AP-21-U-3495. Therefore, it is a sheer typographical error while preparing the claim petition. Therefore, the Tribunal has thoroughly went wrong in dismissing the Original Petition basing on a typographical error. The Tribunal has also went wrong in observing that PWs.1 and 2, who are mother and brother of the deceased, did not state about the lorry number in the petition as AP-21-U-3495 and they stated that the lorry involved in the accident was AP-

21-OO3495. The Tribunal, while dismissing the O.P. on the ground that the registration number of the crime vehicle was not correctly mentioned, failed to consider the other material documents, Exs.A1 to A3, which are the criminal record maintained by the police. A perusal of documents Exs.A1 to A3 and Ex.B1 and also the Chief Affidavits of PWs.1 and 2, would clearly show that the vehicle involved in the accident was lorry bearing registration number AP-21-U-3495.

9. Therefore, the finding of the Tribunal, with regard to the registration number of the vehicle involved in the accident, is set aside.

10. Coming to the aspect of entitlement for compensation and liability of payment of compensation, the Tribunal has tried to make a calculation on account of the death of the deceased, but on the same point that there is no claim on the vehicle bearing registration number AP-21-U-3495, the petition was dismissed.

11. This is a claim petition filed by the mother of the deceased. The deceased was aged 25 years by the date of accident and was working as Hamali and used to earn Rs.2,000/- per month. As the deceased was a bachelor by the date of accident, after deducting 50% from his income, his annual contribution would be Rs.12,000/-. Applying multiplier '18' as per the judgment of the Hon'ble Supreme Court in Smt. Sarla Verma and others v. Delhi Transport Corporation and another¹, the appellant is entitled to claim compensation for loss of dependency, which comes to Rs.18 x 12,000/- = Rs.2,16,000/-. Further, as per the judgment of Hon'ble Supreme Court in Ramilaben Chinubhai Parmar and Ors. V. National

¹ (2009) 6 SCC 121

Insurance Co. and Ors.², the appellant is entitled to conventional charges of Rs.50,000/-.

12. Learned counsel for Insurance company contended that the deceased was traveling in the lorry as a gratuitous passenger and hence, the Insurance company is not liable to pay compensation.

13. This is an accident occurred due to the use of motor vehicle in a public place. The negligence on the part of the driver of the crime vehicle is proved. The crime vehicle was insured with the 2nd respondent. The deceased is a third party to the insurance. Under these circumstances, though the deceased is held to be a gratuitous passenger, the liability of the insurance company is not fully exonerated.

14. The Hon'ble Supreme Court in a common judgment in Civil Appeal No.3047 of 2017 and 3065 of 2017, dated 21.02.2017, held as follows:

“18. The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as “gratuitous passenger” in the offending vehicle and it was for this reason, the insurance companies were exonerated. In Saju P.Paul’s case (supra) also having held that the victim was “gratuitous passenger”, this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings.”

15. In Manager, National Insurance Company Limited v. Saju P. Paul and another³, the apex Court, in paragraph 26 held as under:

26. In the present case, the accident occurred in 1993. At that time, claimant was 28 years old. He is now about 48 years. The claimant

² MANU/ SC/ 0356/ 2014

³ (2013) 2 SCC 41

was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No. 1) may be allowed to withdraw the amount deposited by the insurance company before this Court along-with accrued interest. The insurance company (appellant) thereafter may recover the amount so paid from the owner (Respondent No. 2 herein). The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in the case of Challa Bharathamma.

16. In the instant case, the accident occurred in 2001 i.e., about 16 years back. The claim petition was dismissed on the ground that the registration number of the crime vehicle was not correctly mentioned in the petition. As the findings of the Tribunal are now set aside, and as the appellant, who is the mother of the deceased, could not get compensation all these years, this is a fit case to direct the 2nd respondent-insurer to pay the compensation at the first instance as laid down by the Hon'ble Supreme Court in Saju P. Paul (3 supra), and recover the same from the 1st respondent-owner by following the procedure contemplated in National Insurance Co. Ltd., v. Chella Bharathamma and others⁴.

17. In the result, the appeal is allowed by setting aside the order of dismissal passed by the Tribunal. The appellant is awarded compensation

⁴ AIR 2004 SC 4882

of Rs.2,66,000/-, with proportionate costs and interest at 7.5% per annum, from the date of petition till realization against respondent No. 1. The 2nd respondent is directed to deposit the compensation within two months from the date of receipt of a copy of this order, at the first instance, and recover the same from the 1st respondent-owner of the crime vehicle by following the procedure laid down in Chella Bharathamma (4 supra). The appellant-claimant is directed to pay the Court fee for the compensation awarded over and above the original claim, within two months from the date of receipt of a copy of this order and, on such payment, the appellant is permitted to withdraw the entire compensation amount.

No costs. Miscellaneous petitions, if any pending, shall stand closed.

28th March, 2017

KSM

GUDI SEVA SHYAM PRASAD, J



THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



M.A.C.M.A. No. 1667 of 2006

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