

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.1266 of 2006

JUDGMENT:

The present appeal filed under Section 173 of the Motor Vehicles Act, 1988, by the insurance company challenges to the award dated 02.01.2006 passed by the Court of Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar (hereinafter called as Tribunal) in O.P.No.206 of 2005 filed by respondent Nos.1 to 3 herein under Section 166 of the Motor Vehicles Act.

Heard Sri K.Sitaram, learned Standing Counsel for the appellant-Insurance company and Sri V.Venkateshwarlu, learned counsel for respondent Nos.1 to 3 and perused the material available before the Court.

Respondent No.1 herein is the wife and respondent Nos.2 and 3 are the children of one Sri Baburao, who died in a motor accident that took place on 21.02.1999. Respondent Nos.1 to 3, claiming maintenance of Rs.6,00,000/- for the said death, approached the Tribunal by way of filing O.P.No.206 of 2005. The driver of the vehicle and respondent Nos.4 and 5 in the O.P., who are the parents of the deceased, remained ex parte. The owner of the offending vehicle and the insurance company contested the matter by filing counters. On the basis of the material available, the Tribunal framed the following issues for trial.

1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.ABK 2678 by the 1st respondent?
2. Whether the petitioner is entitled to recover compensation and if so to what amount and from whom?
3. To what relief?

During the course of trial, on behalf of the claimants, P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 policy was filed.

The Tribunal held issue No.1 in favour of the claimants and while dealing with issue No.2, the Tribunal granted a sum of Rs.6,00,000/- towards compensation with interest at 9% per annum from the date of petition till the date of deposit.

According to the learned Standing Counsel for the appellant-insurance company, the impugned award is erroneous and contrary to law. It is further submitted that the Tribunal ought to have held that there was negligence on the part of the deceased, who dashed against the parked lorry. It is further submitted by the learned Standing Counsel that the Tribunal ought not to have granted exorbitant amount towards compensation.

On the contrary, it is contended by the learned counsel for the claimants/respondent Nos.1 to 3 that only after elaborate consideration of the entire material available on record, the Tribunal granted compensation and also answered issue No.1 in favour of the claimants and against the respondents.

As mentioned above, it is the contention of the learned Standing Counsel that only due to the negligence on the part of the deceased, the accident occurred, as such, the insurance company cannot be made liable. In fact, on behalf of the claimants, a constable, who is on bandobast on the date of accident, was examined as P.W.2 and he was eye witness for the accident. He categorically deposed that when he was present at the house of Mr.Prabhakar, Advocate, he observed that when the deceased was going on a scooter and proceeding towards new bus stand,

Jagityal, dashed against the lorry bearing No.ABK 2678, which was parked on the road side without any precautions and parking lights and that the said accident took place at 1.00 A.M, which resulted in the loss of life of the husband of the 1st claimant. The Tribunal also took into consideration the contents of Ex.A1-copy of the FIR to the effect that the accident occurred due to the negligent parking of the lorry. It is also very much evident from the material available that though R.W.1 who was examined on behalf of the insurance company stated that accident occurred due to the negligence of the deceased himself, the investigation report was not filed into the Court. Therefore, the contention of the learned counsel for the appellant that the accident occurred due to the negligence on the part of the deceased cannot be accepted.

Coming to the quantum of compensation, admittedly, the deceased was working as a telephone mechanic in BSNL and in order to show his earnings, Ex.A4 was filed and P.W.3 was also examined. On the basis of the same, the Tribunal estimated the amount and also applied multiplier '16' for granting the amount towards loss of dependency. Therefore, this Court does not find any valid reason to disturb the award passed by the Tribunal.

Accordingly, the Appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

A.V. SESA SAI, J

21st December, 2017.
ssp