THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1183 of 2007

JUDGMENT:

The award dated 26.2.2007 passed by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy in OP No. 428 of 2005 is challenged by the United India Insurance Company Limited which has been arrayed as respondent No.2 in the aforementioned OP.

The facts of the case are briefly stated as under,

The claimants in the abovementioned OP have raised the claim as against the owner and insurer of the lorry bearing No. KA-39-1410 contending that on 7.5.2005 at about 9.45 P.M. while the deceased Pastepuram Nagesh @ Nageshwar was proceeding on a scooter from Digwal towards Kamkole village, he came across a lorry bearing No. KA-39-1410 that was parked on the middle of the road without taking any precaution by putting on the parking indicator signal near a hotel at Lingampally village. Since the said lorry was parked in a negligent manner on the middle of the road without putting on the parking light indicating its parking, the same was not noticed by the deceased while he was negotiating the curve and as a result of it, the scooter driven by him hit the lorry, due to which he sustained injuries and succumbed to the injuries on the spot itself. Police of Munipally registered a case in Cr.No. 32 of 2005 against the driver of the lorry who parked in a negligent manner without taking any precautions.

The claimants, to establish the aforementioned contentions, got examined Sri Mohd. Saleemuddin as P.W.2 and also produced Exs.A1 to A4 which were the certified copies of FIR, Inquest report, Post Mortem Report and charge sheet. The Tribunal, on appreciation of the oral and documentary evidence available in the case record, opined that the driver of the lorry and the deceased were at fault and due to the said negligence the accident in question occurred and accordingly fixed the contributory liability in the ratio of 90:10 per cent and passed the impugned award.

The award passed by the Tribunal is challenged by the insurance company on the following grounds. The first and foremost ground urged by the appellant-insurance company is that the contributory negligence fixed by the Tribunal in the ratio of 90:10 per cent is contrary to the evidence on record. The Tribunal having held that the deceased also contributed for the occurrence of the accident, has fixed the liability in the ratio of 90:10% instead of 50:50%. Its second contention is that though Ex.A5-certificate is not proved by the claimants, the daily wages of the deceased are fixed at Rs.120/- per day without any basis. The third other contention of the insurance company is that the Tribunal had erroneously awarded Rs.15,000/- for loss of consortium and Rs.15,000/- towards loss of estate. These are the main contentions raised by the insurance company in its appeal grounds.

The Tribunal, on appreciation of the oral evidence of P.W.2 and Exs.A1 to A4, had held that the claimants have established that the negligence was on the part of the driver of the lorry bearing No. KA-39-1410 who parked the lorry on the middle of the road without putting on the parking indicator signals and due to his failure to keep stones around the lorry which was stationed on the middle of the road without taking any precaution, the accident in question had taken place. The Tribunal, having observed in para-6 of its order that no evidence as such was adduced by the respondent No.2 who disputed the negligence on the part of the driver of the offending lorry, relied on the evidence of P.W.2 whose evidence was corroborated in all aspects by Exs.A1 to A4, and that the accident in question occurred due to the negligence of the driver of the lorry bearing No. KA-39-1410 who parked the lorry near the curve without putting on parking indicator signal and without taking any precautionary measure while stationing the lorry near the curve etc., held that there was negligence on the part of the deceased also. Though the oral testimony of P.W.2 was believed by the Tribunal, it took a contrary view that the deceased was also at fault and fixed the liability in the ratio of 90:10 percent on the part of the driver of the lorry and the deceased.

The insurance company, though came up with the specific plea that the Tribunal ought to have fixed the liability in the ratio of 50:50, however, failed to adduce evidence supporting its aforementioned plea. The accident admittedly had not taken place due to head on collision between the lorry and the scooter. The scooter hit the right rear side portion of the lorry that was stationed in a negligent manner without putting on the lights indicating the parking of the lorry near the curve. Though the driver of the lorry was responsible for the occurrence of the accident by parking the lorry near the curve without putting on the lights indicating parking of the lorry, the Tribunal fixed the liability in the ratio of 90:10 per cent as against the driver of the lorry and the deceased, though it was abundantly clear from the evidence on record that due to failure on the part of the driver of the lorry to take necessary precautions while parking the lorry, the scooter driven by the deceased hit the lorry. The conclusion arrived by the Tribunal on the issue of negligence cannot be held as erroneous as the evidence available in the case record establishes negligence on the part of the driver of the lorry who parked the lorry near the curve without putting on the lights indicating the parking of the lorry etc. In view of the above reasons, this Court has no hesitation to hold that the Tribunal has held correctly that the driver of the lorry was responsible for the accident who failed to take requisite precautions while parking the lorry near the curve.

Coming to the other contention raised by the insurance company disputing the compensation awarded under the head of loss of income is concerned, the claimants produced Ex.A5-certificate issued by Thapi Mestry Workers Association, Zaheerabad to establish that the deceased was getting income of Rs.160/- per day. Since Ex.A5-certificate was not proved by the claimants by examining the person who issued it, the Tribunal assessed his income roughly at Rs.120/- per day and Rs.3,600/- per month, and after deducting one third of his earnings towards his personal and living expenses, the Tribunal fixed his contribution of income to his family at Rs.2,400/- per month and Rs.28,800/- per annum. On multiplying the said annual loss of income with'17' which was the appropriate multiplier for the people in the age group of 28 years, the Tribunal arrived at a total loss of contribution of the deceased to his family at Rs.4,89,600/-. The Tribunal had granted Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium to the wife of the deceased. Thus the total compensation was worked out to Rs.5,20,000/-. Since there was contributory negligence on the part of the deceased at 10%, the Tribunal deducted 10% from the total compensation and awarded compensation of Rs.4,68,000/-. In my considered view, the Tribunal had rightly awarded the compensation amount under the aforementioned heads. I have not noticed patent legal infirmity in the award passed by the Tribunal. The appeal therefore, in my view, deserves to be dismissed.

In the light of my above discussion, the appeal filed by the insurance company fails and the same is dismissed accordingly. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.15.12.2017
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