

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos.4793 AND 4806 OF 2008

COMMON JUDGMENT:

1. Both these Appeals arose out of the orders, dated 17.03.2006, passed in M.V.O.P. Nos.33 and 31 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge (Fast Track Court), Chittoor (for short, 'the Tribunal').

2. M.A.C.M.A. No.4793 of 2008 (former appeal) is preferred by the appellant - 3rd respondent (insurer), aggrieved by the award of compensation of Rs.3,19,000/-, against the original claim of Rs.4,00,000/-, holding that the respondents 2 and 3, who are the owner and insurer of the Tempo Trax bearing registration No.AP-03D-6768 (for short, 'the crime vehicle'), are alone liable to pay the compensation with interest at the rate of 9% per annum from the date of petition till realisation, in M.V.O.P. No.33 of 2001, filed under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') against respondents 1 to 3, for the death of their younger son, namely, S. Naresh, in a motor vehicle accident occurred on 04.10.2000.

3. Whereas, M.A.C.M.A. No.4806 of 2008 (latter appeal) is preferred by the appellant - 3rd respondent (insurer), aggrieved by the award of compensation of Rs.3,49,000/-, against the original claim of Rs.5,00,000/-, holding that the respondents 2 and 3, owner and insurer of the crime vehicle, are alone liable to pay the compensation with interest at 9% per annum from the date of petition till realisation, in M.V.O.P. No.31 of 2001, filed under Section 166(1)(a) of the Act against the same respondents, for the death of the their elder son, namely, S. Suresh, in the same accident.

4. The parties are referred to as arrayed before the Tribunal.

5. The case of the claim petitioners, as narrated in the petitions, in brief, is that on 04.10.2000 at about 01:20 p.m., when both the deceased and others were travelling by the crime vehicle, from Kuppam to Tirupati, to attend the Chief Minister's programme at Tirupati, and when the crime vehicle reached near Mordhanapalle village, the driver of the crime vehicle drove the same at high speed, in a rash and negligent manner, and dashed against the A.P.S.R.T.C. bus bearing registration No.AP-10Z-5356, which was coming in their opposite direction; as a result of which, both the deceased sustained severe injuries and one of them by name Naresh, younger son, succumbed to the injuries on the spot; while the other by name Suresh, elder son, died while undergoing treatment in C.M.C. Hospital, Vellore on 11.10.2000. Except one passenger, including both the deceased herein, the other passengers travelling by the crime vehicle died in the accident. A case in Crime No.66 of 2000, for the offences punishable under Sections 304-A, 337 and 338 I.P.C., was registered by the Yadamari P.S. against the driver of the crime vehicle. The deceased, Naresh, aged 16 years, younger son of the petitioners, who was a promising and intelligent student studying S.S.C. also used to work in Suresh Photo Studio, run by his father, and assist in day to day activities; while the deceased, Suresh, elder son of the petitioners, aged 22 years, was working as photographer in Suresh Photo Studio, and used to earn Rs.10,000/- p.m., contribute the same to the petitioners. At the time of accident, both the deceased were hale and healthy, contributing their useful time and earnings to the petitioners. Thus, the petitioners lost their sons, who are grown ups, who would have taken care of the petitioners during the rest of their life, suffered mental shock and agony, filed the petitions claiming compensation of Rs.4,00,000/- and Rs.5,00,000/-, respectively, against the respondents 1 to 3.

6. Respondent No.2, owner of the crime vehicle, remained *ex parte* before the Tribunal.

7. Respondents 1 and 3, who are the A.P.S.R.T.C. and insurer of the crime vehicle, filed separate counters in both the petitions denying the averments made in the petitions. Respondent No.1 – A.P.S.R.T.C. contended that the age, occupation and income of the deceased, Suresh, be put to strict proof of the same. He further contended that the burden is on the petitioners to prove that they are the legal heirs of the deceased. There is no rashness and negligence on the part of the driver of R.T.C. Bus and further contended that the claim of the petitioners is excessive. As the crime vehicle belongs to the 2nd respondent was insured with the 3rd respondent - insurer, if any compensation is payable to the petitioners, they are only liable to pay the compensation and sought to dismiss the petitions against him. Whereas, 3rd respondent – insurer contended the accident occurred due to the rash and negligent driving of the driver of 1st respondent – A.P.S.R.T.C. but not due to the rash and negligent driving of the driver of crime vehicle. The driver of the crime vehicle was not having valid and effective driving license at the time of the accident. The deceased were not permitted to travel by the crime vehicle. The 2nd respondent – owner has violated the terms and conditions of the insurance policy, which was not filed before the Tribunal. 2nd respondent – owner colluded with the petitioners and got filed these petitions to claim compensation from 3rd respondent – insurer. Therefore, the 3rd respondent - insurer is not liable to pay compensation to the petitioners and sought for dismissal of the Petitions against him.

8. The Tribunal clubbed both the petitions and recorded common evidence in M.V.O.P. No.31 of 2001. Subsequently, the Tribunal after framing issues, considered the evidence of P.Ws.1 and 2, R.Ws.1 and 2

and the documents Exs.A.1 to A.9, awarded the compensation of Rs.3,19,000/- in M.V.O.P. No.33 of 2001 and Rs.3,49,000/- in M.V.O.P. No.31 of 2001, respectively.

9. Aggrieved by the quantum of compensation awarded by the Tribunal, in both the petitions, 3rd respondent - insurer of crime vehicle preferred these appeals seeking to set-aside the orders.

10. Heard the arguments of learned standing counsel for the appellant-insurer and the learned counsel appearing on behalf of respondents-petitioners. In spite of service of notice, none entered appearance on behalf of the respondents 3 and 4, who are the A.P.S.R.T.C. and owner of the crime vehicle.

11. 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 the monthly income of the deceased Naresh, who was a minor, as Rs.2,000/- and the annual income of the deceased Suresh as Rs.2,250/-, which is excessive; further, the Tribunal erroneously relying on Ex.A-1, certified copy of F.I.R. and Ex.A-4, Accident Information Report, tagged the liability only on respondents 2 and 3; instead, it ought to have taken into consideration the head on collision between the crime vehicle and the A.P.S.R.T.C. bus and held that the 1st respondent is also liable to pay compensation, and also contended that the compensation awarded by the Tribunal is excessive, prayed to allow the Appeals setting-aside the impugned orders.

12. *Per contra*, learned counsel appearing on behalf of the respondents - claim petitioners contended that the Tribunal had rightly taken the monthly income of the deceased Naresh as Rs.2,000/- and the deceased Suresh as Rs.2,250/- and awarded compensation of Rs.3,19,000/- in

M.V.O.P. No.33 of 2001 and Rs.3,49,000/- in M.V.O.P. No.31 of 2001, respectively, on all scores, which is just and reasonable and as such directed that the respondents 2 and 3 alone are liable to pay the compensation; dismissed the claim against the 1st respondent - A.P.S.R.T.C. and, ultimately, prayed to dismiss the Appeals, relied on a judgment of this Court in M.A.C.M.A. No.3378 of 2005, dated 18.09.2014, wherein, this Court dismissed the Appeal preferred by the appellant – insurer, pertaining to the same accident.

13. In view of the rival contentions put forth on behalf of both the counsel, the points that arise for determination are:

- 1) Whether the accident occurred due to rash and negligent driving of the Tempo Trax bearing registration No.AP-03D-6768 or due to the A.P.S.R.T.C. bus bearing registration No.AP-10Z-5356?
- 2) Whether the impugned order is liable to be set-aside?
- 3) To what result?

14. **POINT No.1:** Admittedly, both the deceased are sons of the petitioners. The specific evidence of P.W.1, father of the deceased, is that he has two sons and both of them died in the accident, which took place on 04.10.2000, due to the rash and negligent driving of the driver of crime vehicle. Though both the drivers attributed negligence against each other, the evidence of P.W.2, who is an injured eye witness to the accident, who traveled by the crime vehicle on the date of accident, is that due to bursting of one of the tyres of the crime vehicle, the accident occurred. P.Ws.1 and 2 clearly and categorically attributed negligence against the driver of the crime vehicle. Admittedly, both the deceased herein and other passengers traveling by the crime vehicle succumbed to the injuries in the

accident and P.W.2 narrowly escaped death in the accident with grievous injuries. The petitioners in support of their claim marked Exs.A-1 to A-9. Ex.A-1 is the certified copy of F.I.R., Ex.A-2 is the certified copy of inquest report of Suresh, Ex.A-3 is the post-mortem certificate of Suresh, Ex.A-4 is the certified copy of Accident Information Report, Ex.A-5 is the certified copy of inquest report of Naresh, Ex.A-6 is the certified copy of post-mortem certificate of Naresh, Ex.A-7 is the certificate issued by Sarpanch, G.P. Kuppam, Exs.A-8 and A-9 are the birth and study certificates of Suresh and Naresh, issued by Adarsh English Medium School. The evidence of P.W.2, injured eye witness to the accident is corroborated with the evidence of P.W.1, father of the deceased, and the documents referred above, clearly demonstrate the rash and negligence on the part of the driver of crime vehicle. Registration of F.I.R. against the driver of crime vehicle and absence of taking any action against the driver of R.T.C. bus, are sufficient to prove the rash and negligent act of the driver of crime vehicle. No evidence was adduced on behalf of the respondents to discredit the above testimony with regard to rash and negligent driving of the crime vehicle. There is ample evidence on record to prove that the deceased succumbed to the injuries due to the rash and negligent driving of the driver of crime vehicle and the Tribunal rightly held that the respondents 2 and 3, being owner and insurer of the crime vehicle, are jointly and severally liable to pay compensation to the petitioners, dismissed the claim against the 1st respondent – A.P.S.R.T.C. The finding of the Tribunal is based on record and evidence. No other finding can be substituted on this score.

15. **POINT Nos.2 and 3:** As far as awarding of compensation in M.V.O.P. No.33 of 2001 is concerned, the Tribunal has taken all the facts and circumstances into consideration and awarded a compensation of

Rs.3,19,000/-. The Tribunal had taken the monthly income of the deceased Naresh, aged 16 years, as Rs.2,000/- and annual income as Rs.24,000/-, deducted Rs.8,000/- towards 1/3rd of his personal and living expenses and arrived at Rs.16,000/-, which was his contribution to the petitioners; relying on the II Schedule of the Act, adopted the multiplier '16', applicable to the age group of 15 to 20 years; multiplied Rs.16,000/- with the multiplier '16' and arrived at the loss of dependency as Rs.3,04,000/-, it is wrong, and if rightly calculated, the loss of dependency would come to Rs.2,56,000/- (Rs.16,000 x 16). In addition to this, awarded a sum of Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses, the total comes to Rs.2,71,000/-, but wrongly calculated as Rs.3,19,000/-. Similar mistake had taken place in M.V.O.P. No.31 of 2001, impugned in M.A.C.M.A. No.4806 of 2008. The mandate given under Section 168 of the Act is that the parties are required to be granted just compensation. The mistake that took place in the orders impugned in the instant Appeals is neither averred in the appeal grounds nor brought to the notice of this Court, at the time of hearing. Under these circumstances, it is appropriate to correct the calculation mistakes to grant just compensation to the claim petitioners. The Tribunal has granted very meager compensation towards loss of love and affection and funeral expenses incurred by the claim petitioners; they are required to be enhanced as the deceased Naresh was a student and used to help his parents. So, an amount of Rs.33,000/- is granted towards loss of love and affection and an amount of Rs.15,000/- is granted towards funeral expenses. Accordingly, the amounts granted towards loss of love and affection and funeral expenses are enhanced as indicated above from Rs.10,000/- and Rs.5,000/- respectively. The rate of interest awarded by the Tribunal is also on higher side and in view of the principle laid down by

the Apex Court in ***Rajesh and others Vs. Rajbir Singh and others***¹, it is reduced to 7.5% from of 9% per annum. Except the above modifications, there is no change in the impugned order passed in M.V.O.P. No.33 of 2001.

16. In so far as award of compensation in M.V.O.P. No.31 of 2001 is concerned, though there is no documentary evidence to prove the income of the deceased Suresh, elder son of the petitioners, the Tribunal had taken his monthly income as Rs.2,250/- and annual income as Rs.27,000/-, deducted Rs.9,000/- towards 1/3rd of his personal and living expenses and thereafter arrived at Rs.18,000/-, which was the contribution of the deceased Suresh, to the petitioners; relying on the II Schedule of the Act, took the multiplier '17' applicable to the age group of 20 to 25 years and multiplied (17 x Rs.18,000/-), arrived at the loss of dependency as Rs.3,24,000/-, the calculation is wrong, and if rightly calculated, the loss of dependency would come to Rs.3,06,000/- (Rs.18,000 x 17). In addition to this, awarded a sum of Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards medical expenses and Rs.5,000/- towards funeral expenses, the total amount comes to Rs.3,31,000/-. The Tribunal granted a compensation of Rs.3,49,000/-. The Tribunal has granted meager compensation towards loss of love and affection, so it is enhanced to Rs.20,000/- from Rs.10,000/- and the amount awarded towards funeral expenses is also meager. So, it is enhanced to Rs.13,000/- from Rs.5,000/-. The amount of Rs.10,000/- awarded towards medical expenses is maintained. Accordingly, the amounts granted towards loss of love and affection and funeral expenses are enhanced as indicated above. The rate of interest awarded by the Tribunal is also on higher side and in view of the principle laid down by the Apex Court in

¹ 2013 ACJ 1403

Rajesh², it was modified to that of 7.5% from of 9% p.a. Except the above modification, there is no change in the impugned order passed in M.V.O.P. No.31 of 2001.

17. Accordingly, with the above modifications, both the Appeals are disposed of, maintaining the compensation awarded in both the petitions.

18. As a sequel, pending miscellaneous petitions, if any, shall stand disposed of. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017.
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