

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No. 3331 of 2017

JUDGMENT:

This appeal is arising out of the Judgment and Decree dated 06.02.2006 passed in O.P.No.564 of 2002 on the file of Chairman, MACT, District Judge, at Nizamabad, filed under Section 166 of MV Act, 1988, claiming compensation of Rs.6,00,000/- on account of the death of Kakarla Laxmi Devi in a motor vehicle accident occurred on 14.04.2002, near Pochampadu Guest House Cross Road.

2. The appellant is respondent No.2-National Insurance Company Limited. The respondents are legal heirs of the deceased. On the fateful day, while the deceased along with others was traveling in an auto bearing No.AP-25/U-1869 from Pochampadu Guest House Cross Road, the driver of the auto had driven in a rash and negligent manner, and could not control the vehicle and dashed against another auto bearing No.AP-25/U-693 coming in opposite direction. The deceased received crush injuries and injuries on Head and other multiple fractures over the body, and was shifted to Government Headquarters Hospital, Nizamabad, but she succumbed to injuries while undergoing treatment. The deceased was 19

years old, doing Hotel business, and earning Rs.10,000/- and contributing her earnings to the petitioners. The accident took place due to the rash and negligent driving of the driver of the auto, AP-25/U-1968, a claim was made against respondent Nos.1 and 2, the owner and insurer of the crime auto, for a claim of Rs.6,00,000/-. The first respondent-owner of the auto remained *ex-parte*. The second respondent filed written statement denying its liability and alleging contributory negligence of both the vehicles and pleaded non-joinder of necessary parties. The respondent contended that the person who drove the auto was not having valid and subsisting licence at the time of accident, and denied that the said auto was insured with the 2nd respondent-insurer. It is also alleged that there was collusion between the petitioners and owner of the vehicle in making the claim. The Tribunal on consideration of the evidence of PWs.1 to 4, and Exs.A1 to A7, and Ex.B1 copy of insurance policy, awarded compensation of Rs.3,86,500/- under various Heads.

3. The National Insurance Company Limited, the 2nd respondent in the O.P., has preferred this appeal aggrieved by the impugned award for compensation of Rs.3,86,500/-.

4. Heard the arguments of learned counsel for the appellant-insurance company; and learned counsel for the respondents-claimants.

5. Learned counsel for the appellant submitted that this is a case of head-on collision between two autos due to contributory negligence, but the Tribunal has fastened the liability only on one of the autos leaving the other auto and, therefore, sought for apportioning the liability on both the autos at 50:50 ratio.

6. Learned counsel for the respondents-claimants submitted that this is not a case of contributory negligence and that the Tribunal has clearly held that there is negligence on the part of one of the autos that caused the accident. Referring to para 8 of the impugned judgment, it is argued that the Tribunal has assessed the liability basing on Ex.A1 FIR and ExA2-charge sheet and the evidence of PW.2, an eye witness to the accident. Ex.A1 is the complaint given by Kakarla Laxmamma, grandmother of the deceased, to the SHO, P.S. Palakonda, basing on which the police registered a case in Cr.No.54 of 2015 against Syed Karim, driver of the crime auto. The Police filed charge sheet Ex.A2 which reveals that Syed Karim has driven the auto in a rash and negligent manner and caused the accident. Ex.A3-PME Report, and Ex.A4-Inquest report reveal

that the cause of death was due to receiving injuries in the accident. PW.2 Syed Hakeem was an eye witness to the accident who was also cited as LW.6 in Ex.A2 charge sheet as eye witness. The testimony of PW.2 reveals that on 14.04.2002, at about 4.00 PM, while he was traveling in an auto AP-25/U-1896 along with the deceased Lakshmi devi and her grandmother from Pochampadu to Kodicherla village, by the time the auto reached the Guesthouse, Pochampad, the driver of the auto drove the auto in a rash and negligent manner and dashed to another auto coming in opposite direction due to which the deceased Lakshmi sustained severe injuries to her head and stomach and was shifted to Government Hospital Nizamabad, and she succumbed to injuries while undergoing treatment. He further stated that the accident took place due to the negligence of the driver of the auto bearing No.AP-25/U 1896. The Tribunal placed reliance on Exs.A1 to A4, the evidence of PW.2 who traveled in the auto along with the deceased and who was also arrayed as an eyewitness in the charge sheet Ex.A2, and came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto in which the deceased traveled. The plea of contributory negligence was negated by the Tribunal in the light of the evidence of PW.2 who is an eyewitness to the

accident. Therefore, there is no valid ground to interfere with the findings of the Tribunal.

7. As far as the other contention of the appellant that the Tribunal has taken the income of the deceased at Rs.3,000/- per month without there being any proof of income, cannot be accepted as the deceased was said to have been working at a Hotel at Kodicherla village and was also doing cultivation and was earning about Rs.10,000/- per month as per the testimony of PW.1 regarding the occupation and earnings of the deceased. However, the Tribunal has taken the notional income of the deceased as Rs.3,000/- per month. The Hon' ble Supreme Court in umpteen number of judgments has held that in case of a labourer working in an unorganized sector where there is no proof of income, the notional income for the purpose of calculating compensation can be taken as Rs.3,000/- per month. In the instant case, the deceased was a 19 year old girl and was doing hotel business apart from cultivation and agricultural work. Therefore, the Tribunal has properly taken the notional income of the deceased as Rs.3,000/- which is very reasonable and the same does not require any interference. Having regard to the facts of the case, I do not see any merit in this appeal, and the appeal is liable to be dismissed.

8. **IN THE RESULT**, the appeal is dismissed, confirming the Judgment and Decree dated 06.02.2006 passed by the Tribunal in O.P.No.564 of 2002. The appellant is directed to deposit the compensation amount within one month of the date of the receipt of this order. On such deposit, the claimants are permitted to withdraw their respective share as apportioned by the Tribunal. Miscellaneous petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

27th April, 2018

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