

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.1083 OF 2011

JUDGMENT:

Appellant-Insurance Company filed this appeal against the award and decree dated 13.12.2010 passed in M.V.O.P.No.843 of 2007 by the Chairman, Motor Accident Claims Tribunal-cum-VII Additional District Judge, West Godavari, Eluru, granting compensation of Rs.3,88,000/- as against the claim of Rs.4,00,000/- for the death of the deceased Vegesna Jogeswara Rao in the motor vehicle accident occurred on 04.02.2007.

Respondents 1 to 3-claimants filed claim petition under Section 166 of Motor Vehicles Act read with Rule 455 of A.P.M.V. Rules alleging that on 04.02.2007 the deceased and his driver Karra Venugopala Kirhsna started in a van bearing No.AP31 U 9281 with load of 'Nookalu' at Vaarangal in order to reach Tadepalligudem. When the van reached near Mittapalli Mandal in Khammam District, on the State High Way road at about 4-00 a.m. the driver of the van drove the vehicle in a rash and negligent manner. Mean time, the offending lorry bearing No.ATG 7686 coming from Kallur and proceeding towards Tallada, came in a rash and negligent manner being driven by its driver at high speed and dashed against the van of the deceased, due to which, the deceased sustained severe fracture, multiple, grievous and bleeding injuries on all vital parts of his body and died on the spot. It was further alleged that the deceased used to earn Rs.3,000/- per month by working as a cleaner and maintain his family.

R-4 is the driver of the offending lorry, R-5 is the owner of the offending lorry, appellant is the insurer of the offending lorry

whereas R-6 is the driver of the van, R.7 is the owner of the van and R.8 is the insurer of the van.

Appellant filed a written statement before the Tribunal denying the material averments of the claim petition and stating that the accident was occurred due to rash and negligent driving of the driver of the van and denied negligence on the part of the driver of the offending lorry. It was further stated that the driver of the offending vehicle was not having valid and effective driving license at the time of the accident. Hence, the appellant is not liable to pay compensation.

8th respondent-insurer of the van also filed a written statement denying the material averments of the claim petition and contending that as the accident was occurred due to rash and negligent driving of the driver of the lorry, respondents 1 and 2 and the appellant alone were liable to pay compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the deceased-Vegesna Jogeswara Rao, died in a motor vehicle accident on 4-2-2007 due to rash and negligent driving of the lorry bearing No.ATG 7686 driven by its driver 1st respondent?
- 2) What was the age and income of the deceased?
- 3) Whether the petitioners are entitled to claim compensation? If so, to what amount and from which of the respondents?
- 4) To what relief?

On behalf of the claimants, PWs 1 and 2 were examined and Exs.A.1 to A.5 were got marked. On behalf of the appellant, though no oral evidence was adduced, Ex.B.1 Insurance Policy was got marked.

The Tribunal based on the evidence of PW-2 eye witness to the accident and Exs.A.1 to A.5 came to the conclusion that the accident was occurred due to the rash and negligent driving of the offending lorry. Hence, answered issue No.1 in favour the claimants. For determining the compensation to be awarded, the Tribunal has taken the income of the deceased as Rs.100/- per day and Rs.36,000/- per annum. After deducting 1/3rd therefrom towards personal expenses and applying the multiplier '16', the loss of dependency was arrived at Rs.3,84,000/-. In addition, the Tribunal has granted Rs.2,000/- towards funeral expenses, Rs.2,000/- towards love and affection. Thus, in all, the Tribunal granted Rs.3,88,000/- towards compensation along with costs and interest @ 6% per annum payable by appellant and respondents 4 and 5 jointly and severally, within a period of two months from the date of receipt of copy of the award. Aggrieved by the same, the present appeal came to be filed.

Head the counsel.

Having perused the impugned award and the arguments of the learned counsel for the respondents-claimants, this Court finds no illegality or irregularity in the impugned award passed by the Tribunal fastening liability on the appellant and respondents 4 and 5 jointly and severally, based on the evidence of P.W.2-eye witness and Exs.A.1 to A.5. Further, the compensation awarded by the Tribunal also cannot be said to be excessive or on higher side. Even, the Tribunal has granted very meagre amounts towards funeral expenses and loss of love and affection. Hence, I see no grounds to entertain the appeal.

Accordingly, the appeal is dismissed.

Appellant-Insurance Company shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with costs and interest, after deducting the amounts if any already deposited, within a period of two months from the date of receipt of a copy of this order. On such deposit, the respondents-claimants are at liberty to withdraw their respective share amounts as per the apportionment ordered by the Tribunal.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

23.11.2018
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(M.GANGA RAO, J)