

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NOs. 992 and 994 of 2008

COMMON JUDGMENT:

Since these two appeals arise out of the common order dated 14.9.2007 passed in M.V.O.P.Nos. 576 and 553 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-III-Additional District Judge, Kakinada (for short "the Tribunal"), they are heard together and are hereby disposed of by passing a common order.

The parties will hereinafter be referred to as they are arrayed in the aforementioned OPs.

The petitioner in OP No. 576 of 2005 who is the wife of the deceased Ganji Narasarao, laid the claim for compensation of Rs.3.00 lakhs as against the driver, owner and insurer of Mini bus bearing No. KA 09 3006, due to negligent driving of which by first respondent death of her husband occurred and that the Tribunal, on appreciation of entire evidence, awarded compensation of Rs.2,63,000/- and made the respondents 2 and 3 jointly and severally liable to pay such amount to her together with interest @ 7.5% per annum.

The petitioner in O.P.No. 553 of 2005 laid the claim for compensation of Rs.1.00 lakh as against the respondents 1 to 3 in respect of injuries received by him in the accident dated 19.5.2005 which was caused by first respondent and that the Tribunal, on appreciation of entire evidence placed on record by the parties, awarded compensation of Rs.33,000/- and held the respondents 2 and

3 jointly and severally liable to pay such amount to him together with interest @ 7.5% per annum.

The National Insurance Company Limited which has been arrayed as respondent No.3 in the aforementioned OPs, having been aggrieved by the common award passed by the Tribunal in both the aforementioned OPs., has come up before this Court with the present appeals.

The facts of the case are briefly stated as under,

That on 19.5.2005 the deceased Ganji Narsa Rao who was the husband of the petitioner in OP No. 576 of 2005 approached the petitioner in OP No. 553 of 2005 by name Dudi Rambabu with a request to take him to Prathipadu village on his scooter, while both of them were proceeding on the scooter, and when they reached Vommangi village at about 9.30 P.M., a Mini bus bearing No. KA 09 3006, driven by the 1st respondent, came in a rash and negligent manner opposite to the scooter on which the deceased Ganji Narsa Rao and the petitioner in O.P.No. 553 of 2005 were proceeding, and dashed the scooter and as a result of it, the deceased Ganji Narsa Rao fell down from the scooter and the Mini Bus ran over left leg of the deceased. Soon after the accident both the injured i.e., Ganji Narsa Rao, the husband of the petitioner in OP No. 576 of 2005, and the petitioner in OP No. 553 of 2005 i.e., Dudi Rambabu were taken to hospital and there Ganji Narsa Rao died while undergoing treatment. A case in Cr.No. 52 of 2005 was registered under Sections 304-A and 338 IPC by the Police of Prathipadu against the driver of the Mini Bus

bearing No. KA 09 3006 of which the respondents 2 and 3 were the owner and insurer respectively.

The petitioners in both the OPs, in proof of their respective claims, got examined PWs 1 to 3 and marked Exs.A1 to A4 and Ex.X1. The insurance company which preferred these appeals had not examined any witnesses, but marked the copy of insurance policy as Ex.B1. The Tribunal, on appreciation of the evidence on record, awarded compensation of Rs.2,63,000/- in respect of death of the deceased Ganji Narsa Rao and accordingly passed the award. So far as the claim made by the petitioner in OP No. 553 of 2005 an award was passed granting compensation of Rs.33,000/-.

Having been aggrieved by the common award passed by the Tribunal in OP Nos. 576 and 553 of 2005, the present appeals are filed by the insurer of the Mini Bus bearing No. KA 09 3006.

It is contended by the insurance company that though the petitioner in OP No. 553 of 2005 had not attained any permanent disability and there was no loss of earnings etc., the Tribunal awarded compensation of Rs.33,000/-. It is also the contention of the insurance company that the Doctor whom the petitioner examined as P.W.3 in proof of receiving of injuries stated in clear terms that the injuries received by him are completely healed, and that the fracture also united.

In another appeal filed against the award passed in OP No. 576 of 2005 the insurance company came up with the contention that the award passed by the Tribunal awarding compensation of

Rs.2,63,000/- in respect of death of her husband was against the evidence on record. The Tribunal, by applying wrong multiplier, assessed the compensation at Rs.2,63,000/-.

From the above contentions of the appellant, it is understood that the only grievance of the insurance company is that excessive compensation is awarded by the Tribunal.

The petitioner in OP No. 553 of 2005 is the injured. As per his wound certificate-Ex.A4, he received a lacerated injury 6 cms x 2 cms over parietal region, swelling at left clavicle area 4 cms x 2 cms due to fracture of clavicle and an abrasion over left hand measuring 1 cm x 1 cm. As per the opinion given by P.W.3, the injury No.2 i.e., fracture to clavicle is grievous injury and for the said injury, he has taken treatment in Government Hospital at Kakinada for a period of one month and has taken bed rest for a period of six months as advised. The Tribunal, on consideration of the nature of the injuries received by the petitioner and the trauma which he was put to suffer on account of the injuries received by him, and the treatment taken by him in Government Hospital at Kakinada for a period of one month and also the fact that he was forced to take bed rest for a period of six months on account of the injuries received to his left clavicle, awarded compensation of Rs.33,000/-. The compensation so awarded, in my view, is fair and reasonable.

Coming to the other appeal filed by the insurance company disputing the quantum of compensation of Rs.2,63,000/- in respect of death of the deceased Ganji Narsa Rao also, I find that adequate and

reasonable compensation is awarded. The Tribunal, on appreciation of the fact that the deceased Ganji Narsa Rao was working as a cook prior to his death and was getting income of Rs.2,000/- per month, awarded compensation of Rs.2,63,000/- by applying multiplier '15' as the deceased was aged 43 years by the date of his death. The Tribunal, on deducting one third of his income towards his personal expenditure, has rightly awarded compensation of RS.2,63,000/-.

In my view, the award passed in both the OPs is not suffering from patent illegality. Hence the appeals filed by the insurance company are liable to be dismissed.

Accordingly both the appeals are hereby dismissed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

Dt. 6.4.2018
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JUSTICE J. UMA DEVI

