

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.961 of 2006

JUDGMENT:

This appeal is filed under Section 173 of Motor Vehicles Act challenging the judgment and award dated 24-10-2005 passed in O.P.No.1091 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge(FTC), Ranga Reddy District at L.B.Nagar.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the tribunal in the O.P.

3. The facts leading to filing of the present appeal, in brief, are as follows:

On 10.08.2001 at about 8.45 p.m. one Narender (hereinafter referred to as 'the deceased') was proceeding to his house along with his colleague on a motor cycle. When they reached near Loyola college, Old Alwal, the driver of the lorry bearing No.AP7T 1990 had driven the same in a rash and negligent manner and dashed the motor cycle. Due to the accident, the deceased fell down from the motor cycle and sustained injuries on various parts of the body. Immediately after the accident, the deceased was shifted to Gandhi Hospital, wherein he was declared as dead. The accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP7T 1990 against whom, the Station House Officer, Alwal registered a case in Crime No.368 of 2001 under Section 304-A IPC. By the time of accident, the deceased was aged about 25 years and used to earn Rs.3,500/- per month as painter. The first petitioner is the father, second petitioner is

the mother, third petitioner is the sister and fourth petitioner is the brother of the deceased. The third respondent is the wife of the deceased. The petitioners and the third respondent are dependants on the income of the deceased. The lorry bearing No.AP7T 1990, which belongs to the first respondent was insured with the second respondent-company under policy No.HRO 0004419 with effect from 23.10.2000 to 22.10.2001. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation of Rs.4,50,000/- to the petitioners with interest at 12% per annum from the date of petition till the date of realisation.

4. The first respondent remained *ex parte*. The second respondent insurance company filed counter and additional counter denying all the averments made in the petition *inter alia* contending that there the accident occurred due to the negligence on the part of the deceased. The first respondent in collision with the petitioners did not inform the factum of accident to this respondent. The first respondent had violated the terms and conditions of the policy, therefore, there is no obligation on the part of this respondent to pay compensation to the petitioners. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. The third respondent filed counter admitting the relationship between her and the petitioners. After the death of her husband, the petitioners necked her out of the house, therefore, the petitioners are not entitled for any compensation.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident took place on 10.08.2001 at 8.45 p.m., near Loyola College, Old Alwal P.S., Alwal, on account of the rash and negligence of the driver of the lorry bearing No. AP 7T 1990?
2. Whether the petitioners are entitled to claim compensation and if so, for how much amount?
3. To what relief?

7. During the course of enquiry, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.9 were marked. To dislodge the case of the petitioners, on behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B1 and B2 and X1 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 7T 1990, which resulted in the death of deceased and allowed the petition by awarding compensation of Rs.3,23,000/- with interest at 7.5% per annum from the date of petition till the date of realisation.

9. Being aggrieved by the judgment and award passed by the Tribunal, the second respondent insurance company preferred the present appeal.

10. Learned counsel for the appellant strenuously submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 7T 1990 is not sustainable on facts. He further submitted

that the Tribunal committed error while taking the multiplier as '18' instead of '17'. He further submitted that even though the petitioners failed to prove the income of the deceased, the Tribunal assessed the income of the deceased as Rs.2,000/- per month, which is factually not sustainable. He further submitted that the amount of compensation awarded under various heads is highly excessive and exorbitant. He further submitted that the first respondent violated the terms and conditions of policy and that aspect was not considered by the Tribunal in right perspective and directed the second respondent first to pay compensation to the claimant and recover the same from the first respondent. Therefore, it is a fit case to interfere.

11. Per contra, learned counsel for the petitioners submitted that the Tribunal awarded just and reasonable compensation to the petitioners. He further submitted that the first respondent has not violated the terms and conditions of the policy, therefore, the second respondent has to indemnify the liability of the first respondent. He further submitted that it is not a fit case to interfere with the findings recorded by the Tribunal and the appeal is liable to be dismissed.

12. Basing on the rival contentions, the points that arise for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No. AP 7T 1990?
2. Whether the Tribunal has awarded just and reasonable compensation or not?

3. Whether the first respondent had violated the terms and conditions of Ex.B2 policy so as to absolve the liability of second respondent?

13. **POINT No.1**: As seen from the testimony of P.W.1, who is the mother of the deceased, her son died in motor vehicle accident that occurred on 10.08.2001. As per the testimony of P.W.2, on the date of accident, himself and deceased were proceeding to the house after attending the work. When they reached Loyola College, the driver of the lorry drove the vehicle in a rash and negligent manner and dashed the motor cycle. P.W.1 is not an eye witness to the accident, therefore, her evidence is not helpful to prove the manner of accident. At the time of accident, P.W.2 was proceeding along with the deceased, therefore, he is competent person to speak the manner of accident. It is evident from the chief examination of P.W.2 that the accident occurred due to the rash and negligent driving of the driver of the lorry. In the cross-examination of P.W.2, nothing was elicited to shake his testimony so far as the manner of accident is concerned. Apart from P.W.2, the driver of the lorry is the competent person to speak the manner of the accident. For one reason or other, the respondents did not choose to examine the driver of the lorry or any other eye witness to the accident. As per the recitals of Exs.A1 and A2 certified copies of FIR and charge sheet, the accident occurred due to the rash and negligent driving of the driver of the lorry. A perusal of Ex.A3 inquest panchanama and Ex.A5 post-mortem report reveals that the deceased died due to the injuries sustained in the road accident that occurred on 10.08.2001. As per the recitals of Ex.A6 Motor Vehicles Inspector's report, there is no mechanical defect in the lorry. The material placed before the Court clinchingly

establishes that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 7T 1990. The findings recorded by the Tribunal are based on evidence much less legally admissible evidence. I am fully endorsing with the findings recorded by the Tribunal. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry, which resulted in the death of the deceased. Accordingly, point No.1 is answered in favour of the petitioners-claimants.

14. **Point No.2:** As per Ex.A3 inquest panchanama and Ex.A4 post-mortem report, by the time of accident, the deceased was aged about 26 years. As per the principle enunciated in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**¹, the appropriate multiplier for the age group of 26 to 30 years is '17'. Even as per the second schedule annexed to Section 163-A of M.V.Act, the appropriate multiplier for the age group of 20 to 25 years is '17'. The Tribunal applied multiplier as '17'. Taking into consideration the facts and circumstances of the case, I am of the considered view that the appropriate multiplier is '17' and not '18'. As per the testimony of P.Ws.1, 2 and R.W.1, by the time of death, the deceased used to earn Rs.3,500/- per month as painter. Except the oral testimony of these three witnesses, there is no other documentary evidence to establish the income of the deceased. The Tribunal by taking into consideration the age and other attending circumstances, assessed the income of the deceased as Rs.2,000/- per month. The claimants have not preferred any

¹ (2009) 6 SCC 121

cross-objections. Even by attending coolie work, the deceased certainly may earn not less than Rs.2,000/- per month. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the Tribunal committed error while taking the income of the deceased as Rs.2,000/- per month. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.2,000/- per month, yearly which comes to Rs.24,000/-. Out of the same, the Tribunal deducted 1/3rd towards personal expenses of the deceased. Therefore, the deceased may contribute an amount of Rs.16,000/- per annum to the family. The loss of dependency comes to Rs.16,000/- X 17 = Rs.2,72,000/-. The Tribunal by applying wrong multiplier, awarded an amount of Rs.2,88,000/- towards loss of dependency. The Tribunal awarded an amount of Rs.15,000/- towards loss of consortium, an amount of Rs.15,000/- towards loss of love and affection and also an amount of Rs.5,000/- towards funeral expenses. The Tribunal considered all the aspects in right perspective and awarded just and reasonable compensation under the heads of loss of consortium, love and affection and funeral expenses. There are no grounds much less valid grounds to interfere with the quantum of compensation awarded by the Tribunal under the above referred three heads. The compensation awarded under various heads is as follows:

Loss of dependency	Rs.2,72,000/-
Loss of consortium	Rs. 15,000/-
Towards love and affection	Rs. 15,000/-
Towards funeral expenses	Rs. 5,000/-

Total	Rs.3,07,000/-

The petitioners are entitled for an amount of Rs.3,07,000/- with interest at 7.5% per annum from the date of petition till the date of realisation. The Tribunal dismissed the petition so far as the fourth petitioner is concerned. Petitioners are entitled for compensation in the following manner:

Respondent No.3	: Rs.1,33,000/-
Petitioners 1 and 2 each	: Rs. 70,000/-
Petitioner No.3	: Rs. 34,000/-

Accordingly, point No.2 is answered.

15. **POINT No.3:** The contention of the second respondent is that the first respondent has violated the terms and conditions of the policy. It is not in dispute that the lorry of the first respondent was insured with the second respondent under Ex.B2 policy as on the date of accident. The oral testimony of R.W.2 coupled with Ex.X1 clearly reveals that the driver of the crime vehicle was having driving licence to drive the light motor vehicle. The second respondent has not adduced any evidence to establish that the crime vehicle is a lorry. The fact remains that the driver of the lorry was having licence to drive the light motor vehicle. It is not the case of the second respondent that the driver of the lorry was not qualified to obtain the licence to drive the heavy vehicles.

16. Taking into consideration the facts and circumstances of the case, The Tribunal permitted the second respondent to recover the compensation amount from the first respondent after depositing the same. The findings recorded by the Tribunal on this aspect are based on evidence much less legally admissible evidence. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal.

17. In the result, the appeal is allowed in part reducing the compensation amount from Rs.3,23,000/- to Rs.3,07,000/- with interest at 7.5% per annum from the date of suit till the date of realisation. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

12th April 2018
Rns

