

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.No.91 of 2010

JUDGMENT:

Having been aggrieved by the award dated 01.04.2009 passed in M.V.O.P.No.65 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Ongole, the present appeal is filed by the National Insurance Company Limited which has been arrayed as respondent No.2 in the abovementioned O.P.

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

The factual background of the case is briefly stated as follows:

Petitioners 1 and 2 are the parents and petitioner No.3 is the brother of the deceased M.Rajesh who died in a road accident dated 06.09.2006. It is asserted by them in their claim petition that on 06.09.2006 at about 11:30 PM, while the deceased and his father Sessaiah were proceeding in a tractor bearing No.AP 04 T 2240 with a load of Pottu from Binginipalli Village to Nayudupalem, when they reached near a petrol bunk in between Singarayakonda and K.Bitragunta, one of the tyres of the tractor got damaged and while the deceased was repairing the tractor by lying down under the tractor, a lorry bearing No.KA 03 B 1247 owned by the 1st respondent and insured with the 2nd respondent dashed the tractor which was being repaired by the deceased. As the deceased sustained grievous injuries to his head in the said accident, he was taken to Government Hospital and there he died while undergoing treatment. Police of Jarugumalli Police Station registered a case against the driver of the said lorry bearing No.KA 03 B 1247 in Crime No.59 of 2006 and investigated the case. Since the said accident dated 06.09.2006

resulted the death of the deceased, a claim was laid by the petitioners against the owner and insurer of the lorry bearing No.KA 03 B 1247.

The claim petition was not contested by the 1st respondent-owner of the offending lorry and he remained *ex parte*. It was only the 2nd respondent-insurer of the offending lorry who contested the claim.

It was contended by the 2nd respondent that there was no negligence on the part of the driver of the lorry and it was only due to the negligence of the deceased himself that the accident in question took place. Since the deceased was negligent in keeping the tractor on the road side without putting on signal lights and indicators, the owner and insurer of the said tractor were also the necessary parties to the OP proceedings. It was also contended by the 2nd respondent that the driver of the offending lorry was not possessing a valid and subsisting licence at the relevant point of time.

The petitioners, to substantiate the contentions raised in their pleadings, have examined P.Ws.1 and 2. P.W.1 Mallavarapu Sessaiah was the father of the deceased. P.W.2 Paleti Ravi was the driver of the tractor. The petitioners also relied on Exs.A.1 to A.4, apart from the oral testimony of P.Ws.1 and 2, to prove their contention that the accident which resulted in the death of the deceased was caused by the driver of the lorry bearing No.KA 03 B 1247.

It was deposed by P.Ws.1 and 2, in their evidence that, while the deceased and his father were proceeding on a tractor bearing No. AP 04 T 2240 driven by P.W.2, from Binginipalli Village to Nayudupalem Village, when they reached near the petrol bunk in between Singarayakonda and Nayudupalem, one of the tyres of the tractor got damaged, and while the deceased was repairing the

tractor by lying underneath the tractor, a lorry bearing No.KA 03 B 1247, driven by its driver in a rash and negligent manner, came and dashed the tractor which was being repaired by the deceased, and as a result of it he received grievous injuries to his head and was shifted to Government Hospital immediately for treatment and there he succumb to head injury while undergoing treatment.

The Court below, on appreciation of the entire evidence of P.Ws.1 and 2, found that the tractor was stopped on the road side; the accident occurred at around 10:30 PM during night hours; and that no necessary precautions such as putting on signal lights, indicators were taken when the tractor was stopped for its repairs. It was not deposed in the evidence of P.Ws.1 and 2 that all the required precautions were taken when the tractor was stationed for the purpose of its repairs, and thus, the Court below came to the conclusion that there was contributory negligence on the part of the driver of the tractor also. Accordingly, negligence on the part of the driver of the lorry and the driver of the tractor was apportioned in the ratio of 80:20 percent. The apportionment of negligence made against the tractor driver and the lorry driver appeared to have been done correctly by the Court below based on the evidence available in the case record.

Coming to the question relating to quantum of compensation is concerned, the Court below, on verification of the contents of Exs.A.2 and A.3-copies of post mortem report and inquest report wherein it was recited that the deceased was aged about 21 years, and the other evidence on record, assessed his income roughly at Rs.3,000/- per month. The Court below, upon consideration of the fact that the deceased was a bachelor and his mother was aged about 45 years, applied multiplier '14' on deducting 1/3rd of the income of the

deceased, assessed the loss of income contribution to his family at Rs.3,36,000/-. The Court below had rightly awarded a sum of Rs.17,000/- under the head of loss of estate and funeral expenses and the same, in my view, is fair and reasonable. The Court below had rightly directed respondents 1 and 2 to pay 80% of the total compensation of Rs.3,53,000/-, which comes to Rs.2,83,000/- in the light of the afore-mentioned view that the driver of the tractor also contributed to some extent for occurrence of the accident by not taking precautions while parking the tractor for repairs.

This Court though concurs with the view taken by the Court below that respondents 1 and 2 are liable to pay 80% of the total compensation amount jointly and severally to the petitioners, dissents from its view as to the rate of interest. As awarding of interest at 9% appears to be excessive, the same is reduced to 7.5% per annum.

In the result, the appeal is allowed in part reducing the rate of interest awarded by the Court below from 9% to 7.5% per annum. The rest of the award of the Court below remains as it is.

Miscellaneous applications, if any pending, shall stand closed.
There shall be no order as to costs.

J. UMA DEVI, J

11th July, 2018
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Date: 11.07.2018

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