

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1481 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants-petitioners seeking enhancement of compensation, challenging the Award and decree dated 24.01.2007 in M.V.O.P.No.100 of 2005 passed by the V Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal (FTC), Nandyal, Kurnool District (for brevity "the Tribunal"), awarding compensation of Rs.97,000/- with proportionate costs and interest @ 7.5% per annum, as against the claim of Rs.2,50,000/- laid by them under Section 166 of the Act, for the death of their son – Shaik Mali Basha, in a motor accident that occurred on 16.09.2005 at about 2.30 a.m., at Bye-Pass Road, Near NTR Statue turning, Khammam Town, Khammam District.

The appellants are petitioners, respondent Nos.1 and 2 are owner and insurer, respectively, of the offending Lorry bearing No.AP-11V 8228.

The brief facts of the case are that, on 10.09.2004 at about 5.30 p.m., the Lorry bearing No.AP-11V 8228 started at Gurgoan of Haryana State with a load of Hero Honda Motor Cycles in order to go to Rajahmundry. On the fateful day i.e.,

on 16.09.2004 at about 2.30 a.m., when the offending Lorry reached the Bye-pass Road near NTR Statue turning, Khammam town, Khammam District, the driver of the offending Lorry suddenly cut it in a rash and negligent manner with high speed due to which the deceased – Shaik Mali Basha, who was in the cabin of the lorry as Cleaner of the said lorry, fell down from the cabin and the rear tyres of the said lorry ran over him and he died on the spot. By the date of accident, the deceased was aged about 20 years and earning Rs.3,000/- per month by working as Cleaner of the said lorry. The petitioners, who are parents of the deceased, having lost their son, have filed the above M.V.O.P.No.100 of 2005 before the Tribunal claiming compensation of Rs.2,50,000/- against respondent Nos.1 and 2. Respondent No.1-owner of the offending Lorry filed counter denying rash and negligent driving by the driver of the Lorry, that the driver of the Lorry was having a valid and effective driving licence and that respondent No.2-insurer is liable to pay compensation. Respondent No.2-insurer filed separate counter denying its liability and also the quantum of compensation. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2 and the documentary evidence under Exs.A.1 to A.6 adduced on behalf of the appellants-petitioners, and the documentary evidence under Exs.B.1 and B.2 adduced on behalf of respondent No.2-insurer, vide Award and decree dated 24.01.2007 in M.V.O.P.No.100 of

2005, has allowed the O.P. in part awarding compensation of Rs.97,000/- with interest @ 7.5% per annum from the date of petition till the date of realization against respondent Nos.1 and 2 jointly and severally. Having dis-satisfied with the said amount of compensation awarded by the Tribunal, the petitioners have preferred the present appeal seeking enhancement of compensation.

Heard Sri Nuthalapati Krishna Murthy, learned counsel for the appellants-petitioners and Sri Somanchi Venkateswarlu, learned Standing Counsel for respondent No.2 – Oriental Insurance Company Limited. Perused the Award under challenge and also the evidence on record.

The point that arises for consideration in this appeal is, whether the appellants-petitioners are entitled for enhancement of compensation?

Learned counsel for the appellants-petitioners submits that the deceased was unmarried, aged about 20 years as on the date of his death and working as a Cleaner by profession. He died while working as Cleaner in the offending Lorry because of the rash and negligent driving by the driver of the said lorry. Learned counsel for the appellants-petitioners placed reliance on the evidence of PW.2, an eye-witness to the accident, and submitted that this witness has clearly spoken to about the rash and negligent driving on the part of the

driver of the offending Lorry. However, without there being any evidence on record, the Tribunal has arrived at a conclusion that there was negligence on the part of the deceased also, who was sitting in the lorry and fell down as he was sleeping at the time of lorry negotiating a turn. Learned counsel for the appellants-petitioners argued that the driver of the offending lorry was not examined to prove the statement of PW.2 and, therefore, the observation of the Tribunal with regard to the contributory negligence on the part of the deceased is incorrect.

On the other hand, the learned Standing Counsel for respondent No.2 – insurer submits that the Tribunal observed that the deceased was sleeping in the offending lorry when the accident occurred and, therefore, he was also partly negligent by sleeping in the lorry. In this regard, the learned Standing Counsel for respondent No.2-insurer placed reliance on a judgment of the Apex Court in *RAJ RANI v. ORIENTAL INSURANCE CO. LTD.*¹ and also a judgment of this Court in *DEPOT MANAGER, APSRTC, ANAKAPALLI v. C.V. VENKATA SATYANARAYANA*² and contended that the percentage of the negligence cannot be fixed more than 50% as held by the Hon'ble Apex Court.

At the outset, the finding of the Tribunal with regard to the contributory negligence on the part of the deceased is not

¹ 2009 (7) SCJ 978

² 2011 (4) ALD 492

based on sufficient evidence. The observation of the Tribunal is that PW.2 had stated before the police that the driver of the lorry informed him that Mali Basha was in sleeping condition fell down from the cabin of the lorry. As a matter of fact, in the cross-examination, PW.2 has denied the suggestion made to him that Mali Basha was in sleeping condition and fell down from the cabin of the lorry. Moreover, as rightly contended by the learned counsel for the appellants-petitioners, the driver of the offending lorry was not examined to prove whether he stated the same to PW.2. Even if the driver of the offending lorry had stated anything to PW.2, it becomes hearsay evidence and, therefore, such evidence is of no consequence. Even, if we take the facts, *ex facie*, the finding of the Tribunal, that there was contributory negligence on the part of the Cleaner as he slept in the lorry and it was his negligence, also cannot be accepted, for the reason that the offending Lorry was driven by its driver in a rash and negligent manner as per the testimony of PW.2 and because of his negligent driving only, the accident had occurred. In any view of the matter, there are no reasons forthcoming for the Tribunal in holding that there was contributory negligence on the part of the deceased for sleeping in the offending Lorry. Therefore, the findings of the Tribunal are liable to be set aside in this regard.

As regards the other contention raised by the learned Standing Counsel for respondent No.2-insurer with regard to the contributory negligence on the part of the deceased, in the light of the judgment rendered by this Court in MACMA.No.916 of 2009, dated 11.03.2015, it is the duty of the respondents to take steps to examine the driver of the offending lorry or any other witness to establish the negligence, if any, on the part of the deceased. In the instant case, the respondents have not taken any steps to examine the driver of the offending lorry. Therefore, the decisions relied on by the learned Standing Counsel for respondent No.2-insurer in RAJ RANI's case (supra 1) and C.V. VENKATA SATYANARAYANA's case (supra 2) are not applicable to the facts of the present case, as the contributory negligence is not proved in this case.

Learned counsel for the appellants-petitioners submitted that the compensation awarded by the Tribunal is inadequate for the reason that the age of the mother of the deceased, who is 40 years old, was taken, instead of taking the age of the deceased, as the deceased was an unmarried person by the date of accident. It is further argued that the deceased was a Cleaner by profession and an amount of Rs.3,000/- per month has to be taken into consideration as it was the minimum amount of income being earned by a labourer in an unorganized Sector.

Having regard to the facts and circumstances of the case and in the light of the judgment of the Apex Court in *MUNNA LAL JAIN AND OTHERS v. VIPIN KUMAR SHARMA & OTHERS*³, it is obvious that the age of the deceased has to be taken into consideration and not the age of the mother of the deceased. In the instant case, the age of the deceased was 20 years and, therefore, the appropriate multiplier applicable for his age group is '18', instead of the multiplier '16' as was adopted by the Tribunal. By taking the income of the deceased as Rs.3,000/- per month in view of catena of decisions of the Apex Court and after deducting 50% of the income towards personal expenses, it comes to Rs.1,500/- per month, which is the contribution of the deceased to the family. Therefore, the appellants-petitioners are entitled for a sum of Rs.3,24,000/- (Rs.1,500/- x 12 x 18) towards loss of dependency.

Further, the Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses only and no other amounts were awarded towards loss of love and affection. On consideration of the facts and circumstances of the case, the amount of Rs.2,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.25,000/-. Thus, the total amount of compensation comes to Rs.3,49,000/- (Rs.3,24,000/- towards loss of dependency + Rs.25,000/- towards funeral

³ (2015) 6 SCC 347

expenses). Though the appellants-petitioners have claimed a sum of Rs.2,50,000/- only towards compensation, in the light of the following observations made in para-9 of the judgment of this Court in KOLLURI RAJESWARI AND ANOTHER v. K. ANJANEYULU AND OTHERS⁴, they are entitled for just compensation, even if it was more than their claim.

“..... By following the principle laid down in *Nagappa v. Gurudayal Singh*, 2003 (1) ALD 1 (SC) = (2003) 2 SCC 274, wherein the Hon’ble Supreme Court opined that since the provisions of the Motor Vehicles Act have no restriction on the quantum of compensation that can be awarded in appropriate cases where, from the evidence brought on record, the Courts feel that the claimant is entitled to more compensation than claimed, the Courts may award such compensation, and the only embargo is that the compensation so awarded should be ‘just’, and should neither be arbitrary, fanciful nor unjustifiable from the evidence brought on record.”

In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.97,000/- to Rs.3,49,000/- (Rupees three lakhs forty nine thousand only) with proportionate costs and interest @ 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the entire amount of compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellants-petitioners

⁴ 2018 (4) ALD 97

are permitted to withdraw the entire amount of compensation as apportioned by the Tribunal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

13.07.2018.

Msr



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1481 of 2009



13.07.2018
Msr