

HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A.No. 2081 of 2010

ORDER:

Challenging the award dated 02.06.2010 passed in OP No.2409 of 2008 on the file of X Additional Chief Judge, Fast Track court, City Civil court, Hyderabad, granting compensation of Rs.2,50,000/-, to the parents of the deceased-boy-Prashanth Reddy, who died in a road accident dated 28.07.2008 and making respondent No.2-M/s.Reliance General Insurance Co. Ltd., to pay such amount together with interest at the rate of 7.5 p.a. along with the owner of the Innova Car bearing No.AP 21 TV 6105, it has come before this Court by preferring the present appeal.

For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the aforementioned OP.

Petitioner Nos.1 and 2 are parents of the deceased - Prashanth Reddy. They filed the aforesaid OP stating that on 28.07.2008 at about 4.45 p.m. while their son-Prashanth Reddy was coming to his house in Muthodpally village on cycle from his school, when he reached near Surya Laxmi cotton Mill, Musthodpally village gate, a Tata Indica car bearing No. AP 21 TV 6105 driven by its driver in a rash and negligent manner with high speed and dashed him from his behind and due to which he received severe bleeding injuries. Immediately, after the accident, he

was shifted to Osmania General Hospital, Hyderabad for treatment. While undergoing treatment on 29.07.2008, he succumbed to injuries. A case in Crime No.164 of 2008 was registered by the police of Amangal, against the driver of the offending car. It is further stated by him that the deceased was aged about 14 years and was studying VIII Standard in Aurobindo school, and due to his sudden demise all the expectations in him were lost. Having lost his love and affection, they filed the claim petition under Section 163-A of the Motor Vehicles Act claiming compensation of Rs.4,00,000/- against respondent Nos.1 and 2, who were the owner and insurer of the above car bearing No. AP 21 TV 6105, which was responsible for his death.

Before the court below, the owner of the crime vehicle remained exparte. Insurer of the offending car alone contested the case.

Respondent No.2-Insurance company in its counter denied the manner of the accident narrated in the claim petition, and the age of the deceased. It is contended by respondent No.2 that due to the negligent driving of the cycle by the deceased, the cycle driven by him was hit to the car belonging to respondent No.1 and there was contributory negligence on the part of the deceased. It is further contended that the petitioners without establishing the fact that the crime vehicle is insured with this respondent and the existence insurance policy of the crime vehicle at the material point of time cannot get any compensation

from him and it is also to be established by them that the terms and conditions of the policy are not breached by respondent No.1 and that the driver had valid and subsisting driving licence as on the date of the accident.

Based on the above mentioned pleadings, the court below framed the following points for consideration:

1. Whether the accident resulting in death of K.Prashanth Reddy occurred owing to the rash and negligent driving of the driver of car bearing No. AP 21 TV 6105 ?
2. Whether the petitioners are entitled for compensation and, if so, to what amount and from whom ?
3. To what relief ?

The parents of the deceased examined themselves as P.Ws.1 and 2 and marked Exs.A1 to A6 to prove their case. Ex.A1 was the certified copy of FIR along with the report of Sridhar Reddy in Crime No.164 of 2008 on the file of P.S.Amangal, Mahaboobnagar District. Ex.A2 was the certified copy of Inquest Report. Ex.A3 was the certified copy of the Post-mortem report of the deceased. Ex.A4 was the certified copy of Charge sheet in CC No.581 of 2008 on the file of JFCM, Kalvakurthi in connection with Crime No.164 of 2008. Ex.A5 was the Motor Vehicle Inspector's Report pertaining to Vehicle No. AP 21 TV 6105. Ex.A6 was the original bonafide and conduct certificate issued by Head Master of Aurobindo School, Amangal, showing the date of birth of the deceased as

09.09.1983. The insurance policy of crime vehicle alone was marked as Ex.B1 on behalf of respondent No.2.

The claimants though are not expected to prove that the accident which resulted instantaneous death of the deceased, was caused due to the negligent driving of the car, as they have obtained permission under Section 163-A of the Motor Vehicles Act, where establishment of involvement of the vehicle in question is suffice to claim compensation, they have produced Exs.A1 to A5, which succinctly establish that due to the negligent driving of Tata Indica car bearing No.AP 21 TV 6105 the said car was hit to the cycle on which the deceased was proceeding ahead of it. Hitting of the cycle driven by deceased from its behind by the car as narrated in FIR itself shows negligence on the part of the driver of the car, and also its involvement in the accident.

Placing reliance on Exs.A1 to A5 and the testimony of P.Ws.1 and 2 the court below has come to view there exists sufficient material as to the involvement of Tata Indica Car bearing No.AP 21 TV 6105. Hence, there cannot be any hesitation to this Court to hold that the tribunal has not committed any error in making the owner and insurer of the above mentioned car liable to pay compensation to the petitioners jointly and severally as Ex.B1-Policy copy clearly establishes that the crime vehicle has got valid and subsisting insurance with respondent No.2 as on the date of the accident.

Coming to the other contention raised by the appellant in so far as the quantification of compensation is concerned, it is evident from the material on record that soon after the accident, the deceased was shifted to Osmania General Hospital, Hyderabad and there while undergoing treatment, he succumbed to the injuries received in the accident dated 28.07.2008. After his death, his body was brought to his village by the petitioners for cremation. On appreciation of the aforementioned facts which were borne by record, the court below awarded compensation of Rs.10,000/- under the head of transportation charges and Rs.10,000/- towards funeral expenses.

The court below upon consideration of the evidence of P.Ws.1 and 2, who deposed in clear terms in their evidence that the deceased was studying VIII class and was about 14 years by then and that all the expectations they had in him were lost due to his sudden demise, awarded compensation of Rs.80,000/- under the head of loss of expectation of life and mental agony.

As the deceased was aged about 14 years and a non-earning member, the court below took his income notionally at Rs.15,000/- p.a. as per Schedule-II of the Motor Vehicles Act for computation of compensation under the head of loss of dependency on duly deducting 1/3rd of the annual notional income of Rs.15,000/-, it assessed the compensation of Rs.1,50,000/- under the head of loss of dependency.

As the compensation amount of Rs.2,50,000/- awarded to the claimant under various heads such as, funeral expenditure, transportation charges, loss of expectation of life and mental agony, loss of dependency appears to be fair and reasonable, the award under challenge in my considered view needs no interference except the interest portion which appears to be excessive.

In the light of the above held discussions, award under challenge deserves to be affirmed except the rate of interest awarded on compensation amount. As it is opined that the interest awarded at the rate of 12% p.a. on the compensation amount is on higher side, the same is reduced to 7.5% p.a. Consequent to the partial modification made to the award of the lower court, the appeal by the insurance company is hereby allowed partly.

In the result, the appeal is partly allowed reducing the rate of interest from 12% p.a. to 7.5% p.a. on the compensation amount granted by the tribunal. Rest of the award passed by the tribunal remains as it is. But there shall be no order as to costs.

Miscellaneous petitions if any, pending in the above appeal shall stand closed.

J.UMA DEVI, J