

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1028 OF 2006

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the Insurance Company/respondent No.2 challenging the judgment and award, dated 19.12.2005 passed in O.P.No.366 of 2004 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy (for short, 'the Tribunal').

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

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

On 27.05.2004 Mohd. Kareem (hereinafter referred to as 'the deceased') was proceeding on his auto bearing No.AP-15U-6376 towards Zaheerabad Town from Mahendra Company. In the meanwhile, the driver of the Car bearing No.AP-9X-5026 had driven the same in a rash and negligent manner and dashed against the auto. The accident occurred due to the rash and negligent driving of the driver of the car against whom, the Station House Officer, Zaheerabad Police Station, registered a case in Crime No.121 of 2004 for the offence punishable under Section 304-A I.P.C. Due to accident, the deceased sustained injuries on various parts of the body and died on the spot. By the time of accident, the deceased was aged about 26 years and used to earn Rs.6,000/- per month as an auto driver. Petitioner No.1 is the wife, petitioner No.2 is the father, petitioner Nos.3 and 5 are the

sisters and petitioner No.4 is the mother of the deceased. The petitioners are dependants on the income of the deceased. The Car bearing No.AP-9X-5026, which belongs to the first respondent, was insured with the second respondent company as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,50,000/- to the petitioners with interest at the rate of 18% per annum from the date of petition till the date of realisation.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the auto by the deceased and there was no negligence on the part of the driver of the Car bearing No.AP-9X-5026. This respondent is not liable to pay compensation to the petitioners unless the driver of the first respondent was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition is liable to be dismissed against this respondent.

5. Basing on the above pleadings, the Tribunal framed three issues.

6. During the course of enquiry, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the second respondent, no oral evidence was adduced and Ex.B.1 was marked.

7. 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 Car bearing No.AP-9X-5026, which resulted in the death of the deceased and allowed the petition in part by granting compensation of Rs.3,56,000/- to the petitioners with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

8. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent-insurance company preferred the present appeal.

9. Learned counsel for the appellant-second respondent submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the Car bearing No.AP-9X-5026 alone is not sustainable on facts. He further submitted that the Tribunal ought not to have taken the income of the deceased as Rs.2,400/- per month even though no documentary evidence was produced. He also submitted that the Tribunal awarded compensation on assumptions and presumptions; therefore, it is a fit case to allow the appeal.

10. Learned counsel for respondent Nos.1 to 5/petitioners submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the Car bearing No.AP-9X-5026 was supported by oral and documentary evidence. He further submitted that the Tribunal has awarded just and reasonable compensation to the petitioners; therefore, the appeal is liable to be dismissed.

11. Now 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 Car bearing No.AP-9X-5026, which resulted in the death of the deceased? and
2. Whether the compensation awarded by the Tribunal is just and reasonable?

POINT No.1:

12. As per the testimony of PW.1, the driver of the Car bearing No.AP-9X-5026 had driven the same in a rash and negligent manner and dashed against the auto of her husband. Her testimony further reveals that due to accident her husband sustained injuries on various part of the body and died on the spot. As per the testimony of PW.2, on 27.05.2004 the driver of the Car bearing No.AP-9X-5026 had driven the same in a rash and negligent manner and dashed against the auto bearing No.AP-15U-6376 in Zaheerabad Town. His testimony further reveals that due to accident, the driver of the auto sustained injuries and died on the spot. Admittedly, PW.1 is not an eye witness to the accident, therefore, her testimony is no way helpful to prove the manner of the accident. If the testimony of PW.2 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the Car bearing No.AP-9X-5026. In the cross-examination of PW.2, nothing was elicited to doubt his presence at the time of accident. The testimony of PW.2 is cogent and convincing in all aspects. There are no grounds much less valid grounds to disbelieve the testimony of PW.2. As per the recitals of Ex.A.1-certified copy of F.I.R and Ex.A.2-certified copy of charge sheet, the accident occurred due to the rash and negligent driving of the driver of the Car bearing No.AP-9X-5026. As per the recitals of

Ex.A.3-certified copy of inquest report and Ex.A.4-certified copy of post-mortem report, the deceased died due to injuries sustained in a road accident that occurred on 27.05.2004. Apart from PW.2, the driver of the car is the competent person to speak the manner of the accident and negligence, if any, on the part of the deceased. For the reasons best known, respondent Nos.1 and 2 did not choose to examine the driver of the Car bearing No.AP-9X-5026 or any other person, who has witnessed the accident. The testimony of PW.2 remains unchallenged. The Tribunal, taking into consideration the oral testimony of PWs.1 and 2 and Exs.A.1 to A.4, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Car bearing No. AP-9X-5026, which resulted in the death of the deceased. The Tribunal has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the finding 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 Car bearing No.AP-9X-5026.

POINT No.2:

13. As per Ex.A.3-certified copy of inquest report and Ex.A.4-certified copy of post-mortem report, the deceased was aged about 26 years by the time of death. The Tribunal has taken the multiplier as '18'. The Tribunal has taken the income of the deceased as Rs.2,400/- per month. It is not in dispute that the deceased was an auto driver. Under any circumstances, the auto driver may earn not less than Rs.2,400/- per month. The Tribunal rightly considered the oral and documentary evidence and

assessed the income of the deceased as Rs.2,400/- per month. Per annum it comes to Rs.28,800/-. The Tribunal has deducted 1/3rd income towards personal expenses of the deceased. The deceased may contribute Rs.19,200/- per annum. The loss of dependency comes to Rs.3,45,600/- (19,200 x 18). The Tribunal also awarded an amount of Rs.5,400/- towards loss of consortium. The Tribunal also awarded an amount of Rs.5,000/- towards loss of estate. The compensation awarded under various heads is just and reasonable to meet the ends of justice. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellant that the amount of compensation awarded under various heads is highly excessive and exorbitant. There are no grounds much less valid grounds to interfere with the quantum of compensation awarded by the Tribunal under different heads.

14. The first respondent, being the owner of the Car bearing No.AP-9X-5026, is vicariously liable for the wrongful acts done by his driver. The Car bearing No.AP-9X-5026, which belongs to the first respondent, was insured with the second respondent company under Ex.B.1 policy as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,56,000/- to the petitioners with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. The appeal lacks merits and *bona fides*.

15. In the result, the Appeal is dismissed. There shall be no order as to costs in this appeal.

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

T.SUNIL CHOWDARY, J

Date: 12.04.2018

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