

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Miscellaneous Appeal No. 4035 of 2004

Judgment:

This appeal was preferred by the claimants in O.P.No.779 of 1996 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District and Sessions Judge (Fast Track Court), Nizamabad.

The petitioners filed the claim petition before the Tribunal claiming an amount of Rs.3,00,000/- for the death of one B. Bhoomrao, who was aged about 40 years, in a motor accident that occurred on 19.08.1996, while he was going in a Van bearing registration No.AP-25T-4490 from Ranjal to Hyderabad along with his household articles. It was alleged that at the outskirts of Jangampally village the driver of the Van drove the vehicle in a rash and negligent manner and dashed a parked lorry resulting in multiple fractures and injuries to the said Bhoomrao and he died on the spot. The driver and cleaner of the Van also died and one labourer received injuries. The claimants stated that the deceased was earning Rs.5,000/- per month and contributing the entire amount for maintenance of the family. The first petitioner is the wife, petitioners 2 and 3 are the children and the fourth petitioner is the father of the deceased.

The first respondent – owner of the vehicle filed a counter denying the accident. It was stated that the driver was not negligent and in view of the existence of insurance policy the Insurance Company alone is liable.

The second respondent filed a separate counter and stated that the driver of the vehicle was negligent in driving the vehicle. It was further stated that the deceased was traveling as unauthorized passenger.

On the above pleadings, the following issues were framed by the Tribunal.

1. Whether the accident was due to rash and negligent driving of the TATA Van bearing No.AP-25-T-4490 by its driver?
2. Whether the petitioners are entitled for compensation. If so to what amount and against which of the respondents?
3. To what relief?

Before the Tribunal, PWs.1 to 4 were examined and Exs.A1 to A6 were marked on behalf of the claimants. On behalf of the respondents RWs.1 and 2 were examined and Exs.B1 to B4 were marked.

The Tribunal held that the accident occurred due to rash and negligent driving of the driver of the vehicle bearing No.AP-25T-4490. The income of the deceased was taken as Rs.3,000/- per month in the absence of any evidence and applying the multiplier of 10.45 based on the decision of this Court reported in Bhagwandas v. Mohd. Arif¹, arrived at an amount of Rs.1,88,100/- after deducting the amount towards personal expenses. Apart from the said amount, Rs.2,000/- was awarded towards funeral expenses, Rs.5,000/- towards loss of consortium, Rs.2,400/- for shifting the body of the deceased and Rs.2,500/- for loss of estate. In all, it awarded an amount of Rs.2,00,000/-. Seeking enhancement of the said compensation, the present appeal is filed.

When the appeal is taken up for consideration, it is noticed that as against the owner of the vehicle the appeal was dismissed on 08.02.2016.

The Tribunal, without giving any finding with regard to liability of the respondents 1 and 2, directed the second respondent – Insurance Company to pay to the petitioners and recover the amount from the first

¹ 1987 ACJ page 1052 = AIR 1988 AP 99

respondent – owner for violation of the policy conditions. There is no specific finding with regard to violation of policy conditions.

Be that as it may, in view of dismissal of appeal against the owner, the present Civil Miscellaneous Appeal cannot be entertained and the same is accordingly dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this CMA shall stand closed.

A. RAMALI NGESWARA RAO, J

Date: 03.04.2018
Nsr

