

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.2454 of 2009

JUDGMENT :

The appellant – 2nd respondent aggrieved by the Award and Decree dated 10.6.2008 in O.P.No.963 of 2005 on the file of the Motor Accidents Claims Tribunal (District Judge), at Nizamabad, awarding compensation of Rs.7,63,520/- jointly and severally against respondents 1 and 2 with proportionate costs and interest at 7.5 % per annum from the date of petition till the date of realization, preferred this appeal.

2. The contention of the appellant is that the Tribunal erred in awarding Rs.7,43,520/- towards loss of dependency even in the absence of any documentary evidence and the compensation awarded is contrary to its findings. It is further contended that the Tribunal erred in assessing the monthly income at Rs.6,000/- in the absence of any definite material.

3. The claim of respondents/claimants in brief is as follows:

On 21.5.2005 the deceased Shaik Zakir Hussain while driving the jeep bearing No.AP 25 U 3056 from Nizamabad towards Hyderabad very slowly by the side of the road, at about 4.30 AM when he reached in front of Mythri Petrol Bunk, Kamareddy on

Nagpur to Hyderabad road, Highway No.7, at the same time, lorry bearing No.AP 25 U 6350 driven at high speed in a rash and negligent manner came in opposite direction on wrong side and dashed against the jeep, due to which, he sustained multiple injuries and died on the spot. By the date of accident, the deceased was aged 30 years and was earning Rs.10,000/- per month as owner-cum-driver of the jeep and contributing the same for petitioners.

4. The appellant herein filed counter and contended that the accident was occurred due to rash and negligent driving of the deceased himself who was driving the jeep at the time of accident. The driver of the offending lorry was not holding valid and effective driving licence at the time of the accident and that the vehicle was not road worthy and has no valid permit and fitness to ply. The amount claimed is excessive, capricious and out of all proportions.

5. Basing on the rival contentions, the following issues were settled for trial :

- 1) Whether the accident has taken place due to rash and negligent driving of the lorry bearing No.AP 25 U 6350 by its driver?
- 2) Whether the petitioners are entitled to compensation? If so, to what just amount and against whom?
- 3) To what relief?

6. On behalf of petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A9 were got marked. The respondents did not choose to adduce any oral or documentary evidence.

7. Now, the point that arises for determination is :

“Whether the findings of the Tribunal in assessing the income of the deceased at Rs.6,000/- per month and awarding total compensation of Rs.7,63,520/- is legal, valid and can be sustained?”

8. The learned counsel for the appellant contended that practically there is no evidence to the Tribunal to award Rs.7,43,520/- towards loss of dependency and total compensation of Rs.7,63,520/- and there was no iota of evidence to substantiate the claim of petitioners that the deceased was earning Rs.6,000/- per month and at least the monthly income of Rs.3,000/- should have been taken in the absence of any proof. The Tribunal having observed that there is no document to establish the income at Rs.6,000/- per month, erroneously taken the income of the deceased at Rs.6,000/- per month.

9. *Per contra*, the learned counsel for the claimant submitted that the Tribunal gone by probabilities and the realities of life. Even if it is accepted that there is no material to show the income of the deceased, the Tribunal in a rationale view taken about the possible income of the driver at Rs.6,000/- per month and awarded the compensation.

10. The claim of respondents – claimants is that on 21.5.2005 while the deceased Shaik Zakir Hussain was driving the jeep bearing No.AP 25 U 3056 at about 4.30 AM and when reached in front of Mythri Petrol Bunk, Kamareddy on NH 7, at the same

time, lorry bearing No.AP 25 U 6350 came with high speed in rash and negligent manner in opposite direction on wrong side of the road and dashed the jeep.

11. P.W.1 - Mumtaz Begum is the first claimant and wife of the deceased. Admittedly, she is not an eyewitness to the accident. She spoke about the accident and death of her husband and reiterated in the evidence affidavit what was pleaded in the claim petition.

12. P.W.2 – Syed Isaq is an eyewitness to the accident. His presence at the accident spot on 21.5.2005 at 4.30 AM cannot be doubted as he was cited as second witness in Ex.A2 – charge-sheet as eyewitness to the accident. The evidence of P.W.2 is that at the time of accident on 21.5.2005 at 4.30 AM he was standing in front of Mythri Petrol Bunk, Kamareddy. At that time, he observed the deceased Zakir Hussain driving the jeep bearing No.AP 25 U 3056 from Nizamabad towards Hyderabad very slowly and cautiously on the left side of the road and when reached in front of petrol pump, lorry bearing No.AP 25 U 6350 driven by its driver with high speed in rash and negligent manner came in opposite direction and dashed the jeep. During cross-examination, he denied the suggestion that he stated before police at that time he was going in RTC bus. Any how the respondent is not disputing the presence of P.W.2 at the accident spot. More over, Ex.A1 is copy of F.I.R. lodged by Shaik Rahamathulla, own brother of the deceased, wherein there is a clear

assertion that on 21.5.2005 at about 4.30 AM while his brother deceased was driving the jeep bearing No.AP 25 U 3056, lorry bearing No.AP 25 U 6350 driven at high speed and in rash and negligent manner came in opposite direction and dashed the jeep. The Investigating Officer, after thorough investigation, filed Ex.A2 – charge-sheet against Shaik Osman, driver of the lorry bearing No.AP 25 U 6350 finding that the driver of the said lorry drove the lorry with high speed in rash and negligent manner while proceeding towards Nizamabad side from Hyderabad and dashed the jeep bearing No.AP 25 U 3056 while coming in opposite direction and the accident is due to rash and negligent driving of the driver of the said lorry. The inquestdars in Ex.A3 also opined that the driver of the lorry, who came in opposite direction, dashed the jeep driven by the deceased, who was coming on left side and the accident was due to rash and negligence of the driver of the lorry. The MVI who inspected the offending lorry on 22.5.2005 at 5.30 PM at the police station opined that the accident was not due to any mechanical defects of the vehicle.

13. Though the 2nd respondent took the plea that there was no negligence on the part of the lorry driver and the driver did not possess any valid and effective driving licence, he did not choose to adduce any oral or documentary evidence. The owner of the vehicle who was cited as first witness was set ex parte. The driver of the lorry is the proper person to speak about the manner of accident, but

the 2nd respondent did not choose to examine the driver of the lorry for the best reasons known to it. It is not the case of the appellant that the driver of the lorry was not available or his whereabouts are not known to produce and examine him. Absolutely there is no rebuttal evidence.

14. In the absence of any rebuttal evidence adduced by the 2nd respondent to prove that lorry is not insured with the 2nd respondent, I am of the considered view that the Tribunal is perfectly legal in holding that the offending lorry is insured with the 2nd respondent, having considered the evidence of P.W.2 and documentary evidence under Exs.A1 to A5. On the other hand, Ex.A5 – MVI report clearly establish that the lorry involved in the accident is duly insured with the appellant – 2nd respondent by the 1st respondent owner vide policy No.501602/31/04/6323000 and the policy was valid up to 23.11.2005. The further evidence of P.W.2 supported by Exs.A1 to A5 established that the accident was due to rash and negligence of the driver of the lorry bearing No.AP 25 U 6350 and the appellant – 2nd respondent failed to prove any negligence on the part of the deceased who is the driver of the jeep bearing No.AP 25 U 3056. Such finding is legal, valid and do not suffer from any legal infirmities warranting interference.

15. With regard to income of the deceased, there is evidence of P.W.1, who is the wife of the deceased. According to her evidence by the date of accident her husband was 28 years old

and he was the owner-cum-driver of the jeep bearing No.AP 25 U 3056, besides that he was cultivating Ac.5.00 of land by taking on lease and raising turmeric, sugarcane and other commercial crops and earning Rs.2,40,000/- in all and contributing the same to the family. The suggestion to P.W.1 is that the deceased was not cultivating the land and the deceased was aged more than 40 years. P.W.3 – Shaik Afsar is driver and resident of Malapally Nizamabad. To substantiate that he is a driver, Ex.A8 driving licence is filed. According to which, he possessed light motor vehicle licence and he is a driver. His further evidence is that the deceased used to earn Rs.2,40,000/- per annum by cultivating lands and driving the jeep. In the cross-examination, he could not give proper answers about the house number of the deceased and denied the suggestion that he does not know the deceased and petitioners. Ex.A3 is the inquest report wherein occupation of the deceased was shown as owner-cum-driver of the jeep.

Therefore, the evidence of P.W.1 corroborated with P.W.3 and Ex.A3 goes to suggest that the deceased was a driver-cum-owner and he possessed Ex.A6 driving licence, according to which to drive non-transport vehicle it is valid up to 31.10.2020 and to drive transport vehicle it is valid up to 29.3.2008, whereas accident occurred on 21.5.2005, by which time he was having valid and effective driving licence to drive the jeep. With regard to the income, the petitioners did not produce any documentary evidence.

16. With regard to the age, in the claim petition, age of the deceased was noted as 30 years and as per the evidence of P.W.1, age of the deceased was 28 years and in Ex.A3 - inquest report and Ex.A4 - PME report, age of the deceased is noted as 35 years. In Ex.A6 – driving licence, date of birth of the deceased is noted as 9.10.1972, whereas accident occurred on 21.5.2005. If the date of birth mentioned in Ex.A6 is considered as true and correct, the age of the deceased at the time of accident i.e., 21.5.2005 comes to 33 years, which was rightly considered.

17. The Tribunal, having considered the evidence of P.Ws.1 and 3, came to the conclusion that petitioners did not adduce any satisfactory evidence with regard to income of the deceased or the deceased was aged about 33 years, whose occupation is owner-cum-driver of the jeep and considered the income of the deceased at Rs.6,000/- per month or Rs.72,000/- per annum and deducted 1/3rd towards personal expenses and arrived at the contribution to the family at Rs.48,000/- per annum and applied the multiplier 15.49 as per schedule of Section 163-A of Motor Vehicles Act, 1988 considering the age of 33 years. This is an appeal preferred by the Insurance Company and there is no cross-appeal or objection filed by the claimant.

18. In the facts and circumstances discussed above and findings therein, I am of the considered view that the Tribunal, having considered oral evidence of P.Ws.1 to 3 on record and

documents Exs.A1 to A9, came to the right conclusion that accident was due to rash and negligent driving of the driver of the lorry bearing No.AP 25 U 6350 and assessed monthly income of the deceased at Rs.6,000/- per month and arrived the contribution to the family at Rs.48,000/-, having considered the age of the deceased as 33 years as per Ex.A6 – driving licence of the deceased and applied multiplier 15.49 and awarded compensation of Rs.7,43,520/- and in addition to that, granted Rs.15,000/- towards loss of consortium and Rs.5,000/- towards transportation charges and funeral expenses of the deceased and accordingly granted total compensation of Rs.7,63,520/- with subsequent interest at 7.5% per annum from the date of petition till the date of realization against respondents 1 and 2 jointly and severally. I do not find any illegality or infirmity in the findings and conclusions arrived at by the tribunal in awarding total compensation of Rs.7,63,520/- warranting interference.

19. In the result, the appeal is dismissed while confirming the award and decree dated 10.6.2008 in O.P.No.963 of 2005 on the file of the Motor Accidents Claims Tribunal (District Judge), at Nizamabad, awarding compensation of Rs.7,63,520/- jointly and severally against respondents 1 and 2 with proportionate costs and interest at 7.5 % per annum from the date of petition till the date of realization. The appellant is directed to deposit the said amount after deducting the amount if any already deposited or paid within a period of thirty days from the date of receipt of a copy of the

judgment. The apportionment and permissions accorded by the Tribunal are confirmed.

20. Advocate fee is fixed at Rs.2,000/-.

21. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

23rd January, 2018.
skmr

