

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1597 OF 2008

AND

M.A.C.M.A.M.P.No.5502 OF 2015

IN/AND

CROSS OBJECTIONS (SR) No.39301 OF 2015

COMMON JUDGMENT:

M.A.C.M.A.No.1597 of 2008, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the United India Insurance Company Limited, aggrieved by the grant of compensation of Rs.12,55,000/- with interest at the rate of 7% per annum from the date of petition till the date of deposit, as against a claim of Rs.14,00,000/-, to respondent Nos.2 to 6/claimants, by the learned V Additional Metropolitan Sessions Judge (Mahila Court) – cum – XIX Additional Chief Judge, City Criminal Courts at Hyderabad *vide* order, dated 24.01.2008, passed in O.P.No.1243 of 2005. The claimants preferred Cross Objections (SR) No.39301 of 2015 seeking enhancement of compensation. The claimants filed M.A.C.M.A.M.P.No.5502 of 2015 seeking to condone the delay of 2639 days in filing the cross objections.

2. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties will be hereinafter referred to as per their array before the Tribunal.

3. Learned Standing Counsel for the United India Insurance Company Limited would contend that the lorry bearing No.ATT 5082 was a stationed lorry at the time of accident; that the deceased Mohd.Alasuddin dashed the lorry from back side with his motor cycle, but the Tribunal held that the driver of the lorry was

exclusively negligent in parking the lorry in the middle of the road without any signals and precautionary measures and granted compensation against the owner and insurer of the said lorry. In support of his claim, the learned Standing Counsel relied on a decision reported in **Anuradha Kaushik & Others vs. Varun Ground Water Development Corporation & Others**¹. Learned Standing Counsel would further contend that the compensation awarded by the Tribunal on different heads is excessive; that the Cross Objections (SR) No.39301 of 2015 were filed with a delay of 2639 days and therefore, the cross objections may not be taken into consideration and ultimately, prayed to reject the cross objections and allow the appeal as prayed for.

4. On the other hand, learned counsel for the claimants would contend that on 29.11.2004, the time of accident was around 8:15 P.M.; that the driver of the offending lorry bearing No.ATT 5082 parked the lorry in the middle of the road without any signals and precautionary measures; that the driver of the lorry bearing No.ATT 5082 was exclusively responsible for the occurrence of the accident and the subject death of the deceased Mohd.Alasuddin; that the compensation awarded by the Tribunal is meagre; that there is sufficient cause to condone the delay in filing the cross objections and ultimately, prayed to dismiss the appeal and condone the delay of 2639 days in filing the cross objections and consequently, enhance the compensation by allowing the cross objections.

¹ I (2007) ACC 305 (DB)

5. In view of the submissions made by the learned counsel for both sides, the points that arise for determination are:

“1. Whether the Tribunal is justified in holding that there was negligence on the part of the driver of the lorry bearing No.ATT 5082 in parking the lorry negligently in the middle of the road without any signals and precautionary measures?

2. Whether the Tribunal is justified in granting compensation of Rs.12,55,000/- with interest at the rate of 7% per annum from the date of petition till the date of deposit, as against a claim of Rs.14,00,000/-?

3. Whether the claimants are entitled for enhancement of compensation as prayed for? and

4. Whether the claim against the Insurance Company is liable to be dismissed?”

6. **POINTS 1 & 4:-** As per the evidence on record, the subject accident occurred on 29.11.2004 at about 8:15 P.M. P.Ws.1 and 3 are not the eye witnesses to the occurrence of the accident. As per the evidence of P.W.2, on hearing a big sound, he had seen the occurrence of the accident on 29.11.2004 and also stated that the accident occurred at about 8:00 P.M. on that night near Appareddyguda gate. On hearing the sound, he stopped his scooter and saw that one person dashed against a stationed lorry with his motor cycle from behind and died on the spot. P.W.2 also stated with regard to the information given to the family members of the deceased. As per the evidence of P.W.2, he was not examined by the police and he did not give report to the police. As per his evidence, the deceased dashed the stationed lorry from back side. P.W.2 also stated that had the parking lights were there, the deceased would not have dashed the lorry and avoided the accident. There were no precautions taken by the driver of the lorry, as per the evidence of P.W.2. As per Ex.A-1 – certified copy

of F.I.R. and Ex.A-2 – certified copy of charge sheet, the driver of the lorry bearing No.ATT 5082 was guilty of negligence and occurrence of the accident for not taking the precautions. Though the learned Standing Counsel for the Insurance Company contended that there was rashness and negligence on the part of the deceased Mohd.Alasuddin in driving his motor cycle, no evidence was adduced in support of the same. In the citation referred supra, a tanker was parked negligently in the middle of the road. No signal or indication was put on. One van dashed the tanker from behind. Both the drivers were held responsible for the occurrence of the accident and the Tribunal apportioned the liability in a ratio of 50:50 against both the vehicles and the same was confirmed by the Hon'ble High Court of Madhya Pradesh.

7. In the instant case, admittedly, there is no evidence on behalf of the Insurance Company and the owner of the lorry bearing No.ATT 5082 to show that the driver of the lorry had put on the parking lights and rightly parked the lorry in the road margin. There is only evidence of P.W.2 with regard to the wrong parking and not putting the lorry on the parking lights. Further, P.W.2 did not report to the police and he was not examined by the police. However, the Tribunal considered the evidence of P.W.2. As per the criminal case record, the driver of the lorry bearing No.ATT 5082 was guilty of negligence in parking the lorry and responsible for occurrence of the subject accident. Therefore, it cannot be held that the driver of the lorry bearing No.ATT 5082 was not responsible for the occurrence of the accident. In the given circumstances, it is appropriate to state that had the deceased Mohd.Alasuddin drove his motor cycle carefully taking all

precautions, he would have avoided the accident. When the stationed lorry was dashed from back side, certainly, it can be held that the person who dashed the stationed lorry is also guilty of negligence. It cannot be said that the subject accident is only due to the wrong parking of the lorry without taking any precautions. It can be held that the deceased Mohd.Alasuddin was also equally responsible for dashing the stationed lorry and succumbing to injuries. Therefore, the driver of the lorry bearing No.ATT 5082 as well as the deceased Mohd.Alasuddin are equally responsible for the occurrence of the accident.

8. In view of the above circumstances, the Tribunal ought to have apportioned the liability in a ratio of 50:50%. Point Nos.1 and 4 are answered accordingly.

9. **POINT No.3:-** As far as the cross objections are concerned, they are filed with a delay of 2639 days. Though the claimants filed M.A.C.M.A.M.P.No.5502 of 2015 seeking to condone the delay of 2639 days in filing the cross objections, no sufficient cause is shown to condone the said delay. The delay is abnormal. Further, the claimants have to explain the day-to-day delay caused in filing the cross objections. Viewed from any angle, sufficient cause is not assigned to condone the abnormal delay of 2639 days in filing the cross objections. Hence, M.A.C.M.A.M.P.No.5502 of 2015 is dismissed and consequently, Cross Objections (SR) No.39301 of 2015 stand rejected.

10. **POINT No.2:-** As far as assessment and awarding of compensation is concerned, the Tribunal had taken the correct age of the deceased as "37" years and the loss of annual income of the

deceased as Rs.80,004/-, and after deducting 1/3rd towards his personal expenses, applied the multiplier “15”. The Tribunal also awarded an amount of Rs.15,000/- towards loss of consortium to the first claimant and Rs.10,000/- each towards loss of love and affection to the remaining claimants. Thus, the Tribunal is justified in granting the compensation of Rs.12,55,060/-, which is rounded to Rs.12,55,000/-, in total with interest at the rate of 7% per annum from the date of petition till the date of deposit, as against a claim of Rs.14,00,000/-, on different heads. Therefore, the same cannot be reduced, as contended by the learned Standing Counsel for the United India Insurance Company Limited.

11. Accordingly, M.A.C.M.A.M.P.No.5502 of 2015 is dismissed and consequently, Cross Objections (SR) No.39301 of 2015 stand rejected. M.A.C.M.A.No.1597 of 2008 filed by the United India Insurance Company Limited is allowed in part directing the owner and the insurer of the lorry bearing No.ATT 5082 i.e., respondent No.1 and the appellant herein, to pay 50% of the compensation awarded by the Tribunal along with costs and interest at the rate of 7% per annum from the date of petition till the date of realisation jointly and severally. There shall be no order as to costs.

12. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 13.08.2018
AMD



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