

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 826 of 2007

JUDGMENT:

The award dated 3.10.2006 passed by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II-Addl. District Judge, Karimnagar at Jagtial in OP No. 103 of 2005 is assailed in this appeal by the National Insurance Company Limited represented by its Branch Manager and Divisional Manager who have been arrayed as respondents 3 and 4 in the abovementioned OP.

The parties will hereinafter be referred as they are arrayed in the abovementioned OP for the convenience sake.

The facts of the case are briefly stated as under,

The petitioners-claimants 1 to 3 are the wife and children of the deceased Polam Gopal Reddy who died in a motor vehicle accident on 20.5.2005. They have laid the claim as against the driver and owner of lorry bearing No. TN-45-X-3272 who are respondents 1 and 2 and the insurer of the aforementioned lorry represented by respondents 3 and 4, for compensation of Rs.17,00,000/- in respect of death of the deceased Polam Gopal Reddy. Their case is that on 20.5.2005 at about 5.00 P.M. while the deceased Polam Gopal Reddy was returning home on a two-wheeler bearing No. AP-1-E-6328 driven by his friend Cheruku Satyanarayana Reddy after completion of his duty, the deceased received a phone call from his Manager to come back to his office, pursuant to the instructions given by his Manager, while the two wheeler was being taken back to his work place, it was hit by a lorry bearing No. TN-45-X-

3272 which came from Bellampalli side in a rash and negligent manner and as a result of it, the deceased who was traveling on two-wheeler as a pillion rider, fell down and sustained fatal head injury and the tyres of the lorry ran over him and it resulted in his instantaneous death. The claimants contended that the Polam Gopal Reddy was working as a Timber man in KK-2 Incline of Singareni Collieries Company Limited, Mandamarri and was getting salary of Rs.18,264-99 ps. Due to sudden demise of the deceased, the claimants were put to suffer mental agony and lost their livelihood and that the loss which they sustained could not be compensated in terms of money. The Police of Mandamarri registered a case in Cr.No. 92 of 2005 under Section 304-A IPC against the respondent No.1, who was the driver of the lorry bearing No. TN-45-X-3272.

The Tribunal, on appreciation of the oral and documentary evidence available in the case record, held that the accident dated 20.5.2005 which resulted in instantaneous death of the deceased, occurred due to the negligent driving of the lorry bearing No. TN-45-X-3272 and accordingly ordered for payment of compensation of Rs.13,10,000/- to the claimants by making the respondents 1 to 4 liable to pay such compensation jointly and severally.

Having been aggrieved by the said award passed by the Tribunal, the insurance company has come up with the present appeal.

The prime contention of the insurance company is that though the Bajaj Motor cycle bearing No. AP-1-E-6328 and the lorry bearing No. TN-45-X-3272 involved in the accident dated 20.5.2005, the driver,

owner and insurer of the lorry bearing No. TN-45-X-3272 alone were made as parties to the claim petition, and since the owner and insurer of the motor cycle bearing No. AP-1-E-6328 were not made as parties to the petition, the Tribunal ought to have dismissed the claim petition for non-joinder of proper and necessary parties.

The second contention of the insurance company is that the finding of the Tribunal that the accident occurred due to the negligent driving of the lorry bearing No. TN-45-X-3272 is wholly misconceived. The evidence on record is clear to the effect that while the two wheeler was taking a turn on the road, the accident in question occurred and there was no negligence as such on the part of the lorry driver in causing the accident. Discarding the aforementioned material evidence, the Tribunal has wrongly fastened the entire liability as against the insurer of the lorry bearing No. TN-45-X-3272, though there was contributory negligence on the part of the driver of the two wheeler bearing No. AP-1-E-6328 who was equally responsible for the occurrence of the accident.

The third other contention of the insurance company is that the Tribunal has not taken the net salary of the deceased into consideration while quantifying the compensation under the head of loss of dependency. The Tribunal has wrongly added 10% to the existing gross salary of the deceased towards his future prospects. The multiplier applied by the Tribunal is also not correct. These are the grounds urged by the insurance company to challenge the award passed by the Tribunal, dated 3.10.2006 in OP No. 103 of 2005.

The claimants examined P.W.3-D. Sammaiah who was the eye-witness to the accident and produced Exs.A1 to A8 to establish that the accident dated 20.5.2005 which resulted in the instantaneous death of the deceased, occurred due to the negligent driving of the lorry bearing No. TN-45-X-3272 by its driver. Though it was contended by the insurance company that there was head on collision between the lorry bearing No. TN-45-X-3272 and the two wheeler and that the drivers of both the vehicles were responsible for the occurrence of the accident, it did not choose to examine the driver of the lorry bearing No. TN-45-X-3272 to prove his innocence. The police of Mandamarri, on due investigation of the case, laid the charge sheet against the driver of the lorry bearing No. TN-45-X-3272 stating that the accident in question took place while the deceased was returning back to his office after completion of his duty on the motor cycle bearing No. AP-1-E-6328 due to the hit of the said motor cycle by the lorry bearing No. TN-45-X-3272 which came from Bellampalli side in a rash and negligent manner. The Sub-Inspector of Police, Mandamarri police station who laid the charge sheet against the driver of the lorry was examined as P.W.4 by the claimants. His evidence would disclose that on thorough investigation of the case, he laid the charge sheet against the driver of the lorry bearing No. TN-45-X-3272 who was responsible for the occurrence of the accident. Relying on the evidence of P.W.3 who was the eye-witness to the aforementioned accident, and other supporting documentary evidence produced by the claimants in the form of Exs.A1 to 4 and A8 and the evidence given by P.W.4-Sub-Inspector of Police, Mandamarri who laid the charge sheet

against the driver of the lorry, the Tribunal had rightly held that on account of the rash and negligent driving of the lorry bearing No. TN-45-X-3272, the accident dated 20.5.2005 occurred. Admittedly no substantial evidence was adduced by the insurance company establishing its contention that there was contributory negligence on the part of the rider of two wheeler. In such circumstances, it is difficult to hold that the driver of the two wheeler was equally responsible for the occurrence of the accident. Since no substantial evidence was adduced by the insurance company contradicting or rebutting the evidence given by P.W.3 whose evidence was corroborated in all aspects with the documentary evidence produced by the claimants, the Tribunal had rightly recorded its finding that the driver of the lorry bearing No. TN-45-X-3272 himself was responsible for the occurrence of the accident and accordingly held the owner of the lorry bearing No. TN-45-X-3272 liable vicariously for the negligent act committed by his driver.

Coming to the other contention raised by the insurance company on the aspect of fastening of liability on it to pay compensation along with the offending vehicle owner is concerned, it is evident from the material available in the case record that the driver of the lorry is liable for occurrence of the accident. The insurer of the lorry, having agreed to indemnify the liability of the owner of lorry by virtue of Ex.B1-insurance policy taken in respect of crime vehicle, cannot escape its liability to pay the compensation.

So far as the contention raised by the insurance company on the aspect of computation of loss of dependency is concerned, it is evident

from the material placed in the case record that the deceased was working as a Timber man in KK-2 Incline of Singareni Collieries Company Limited, Mandamarri by the date of his death. The claimants examined P.W.2-G. Tirupathi and through him they produced Ex.A5-salary certificate of the deceased. The Tribunal, on thorough appreciation of the oral testimony of P.W.2 and the contents of Ex.A5-salary certificate, rightly assessed the annual loss of dependency and on multiplying it with the relevant multiplier '8', it awarded total compensation of Rs.13,10,000/- which include compensation under the head of loss of consortium, funeral expenses etc, by placing reliance on the decisions rendered in various other cases which it mentioned in the order impugned in this appeal. Taking note of aforementioned aspects and on evaluation of the evidence on record, this Court opines the Tribunal awarded just and reasonable compensation.

In view of my aforementioned findings, the appeal filed by the insurance company fails and the same is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed.

There shall be no order as to costs.

Dt. 3.1.2018
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JUSTICE J. UMA DEVI