

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

M.A.C.M.A.No. 1264 of 2008

JUDGMENT:

The present appeal came to be filed under Section 173 of the Motor Vehicles Act, challenging the judgment and decree dated 14.11.2007 passed in M.V.O.P.No. 246 of 2006 by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Ongole.

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

3. The claimants/petitioners herein, who are the wife, children and mother of the deceased, filed an application under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.30 lakhs for the death of one Sk.Anwar Basha in an accident, which is said to have taken place on 12.06.2006 at 10 a.m. Vide judgment dated 14.11.2007, the Chairman-cum-District Judge, Ongole awarded a sum of Rs.3,94,400/- with interest @ 7.5% per annum as compensation, holding that there was contributory negligence to an extent of 15% on the part of the deceased.

4. The facts in issue show that on 12.06.2006, at about 10 a.m., when the deceased and his elder brother by name Syed Rasheed were proceeding towards Pakala crossroad on the left side road

margin, a TVS Star motor cycle, bearing registration No. AP 27 H 9641, belonging to the 1st respondent and insured with the 2nd respondent, driven by its driver in a rash and negligent manner with high speed and without blowing horn, dashed against the deceased, leading to his death. In respect of the said accident, a case in Crime No. 90 of 2006 came to be registered under Section 304 (A) IPC.

5. The owner of the vehicle, who was arrayed as the 1st Respondent, did not choose to file counter. However, the 2nd respondent-Insurance Company filed a written statement, denying the contents of the petition, including the manner in which the accident took place and also the involvement of the vehicle, much less the permit and insurance with the 2nd respondent. In any event, it is pleaded that the claim made by the petitioners is excessive.

6. Basing on the pleadings in the petition and counter, the claims tribunal framed the following issues:

1. Whether the deceased died due to rash and negligent driving of the driver of the motorcycle of 1st respondent?
2. What is the correct age and income of the deceased as on the date of the accident?
3. Whether the petitioners are entitled for compensation, if so, to what extent and from whom?
4. To what relief?

7. In order to prove their claim, the claimants examined PWs 1 to 3 and got marked Exs.A1 to A10. On behalf of the respondents, RW1 was examined and Exs. B1 to B3 were marked.

8. Considering the evidence on record, the claims tribunal, while holding that the deceased was negligent to the extent of 15%, awarded compensation of Rs.3,94,400/- with simple interest @ 7.5% per annum from the date of petition till the date of realization, with proportionate costs. Challenging the same, the present appeal came to be filed by the claimants.

9. The learned counsel for the appellant mainly submits that the trial court erred in holding that there was negligence on the part of the deceased while crossing the road. He submits that the deceased was hit by a motor cycle, which he could not have anticipated. According to him, the accident took place due to driving of the vehicle in a rash and negligent manner and with high speed.

10. Insofar as the quantum of compensation is concerned, the learned counsel would contend that the deceased worked as a Driver in Saudi Arabia, having a heavy vehicle licence, and that being the position, taking his income as Rs.3,600/- per month appears to be on the lower side. Hence, seeks enhancement of the same.

11. On the other hand, Sri Harnath Gupta, learned counsel for the 2nd respondent-Insurance Company, would contend that no

prudent person would cross the road without taking the minimum precaution of seeing on either side. According to him, the accident took place only because of the negligence of the deceased, who crossed the road, ignoring the precautions to be taken while crossing the road.

12. Insofar as the quantum of compensation is concerned, he would contend that there is absolutely no material to show that the deceased was in employment during the accident. According to him, the deceased was whiling away his time at Singarayakonda, without doing any work. Hence, pleads that the compensation of Rs.3,94,400/- fixed by the trial court is just and reasonable.

13. It is to be noted that there is no dispute with regard to the manner in which the accident took place, since the findings of the trial court are not challenged by the 2nd respondent-Insurance Company.

14. So, the question that falls for consideration is whether there was any negligence on the part of the deceased while crossing the road and whether the compensation awarded is just and reasonable.

15. Coming to the aspect of negligence on the part of the deceased while crossing the road, the trial court, in its judgment, observed as under:

“Though the averments of Ex.A1 FIR & Ex.A5 charge sheet could prove the rash and negligent

driving of the driver of R1, the facts of the deceased was going towards Pakala cross road which runs from west to east, the crime vehicle was running from south to north and from the cross-examination of PW2 that the accident was occurred on the middle of the road speak of the facts that the deceased also contributed to the accident as it is but for no due care, he could have averted the accident had he been slow while crossing the road in observing the vehicles passing through. However this does not absolve the liability of the respondents totally but for saying the deceased also contributed the accident. Thus the contributory negligence on the part of the deceased is estimated at 15% and the remaining 85% is that of R1 owner and his driver.”

16. A reading of the findings given by the trial court would show that the said court came to the conclusion that there was 15% contributory negligence on the part of the deceased, mainly on the ground that the accident took place in the middle of the road and that no care was taken by the deceased while crossing the road. However, no evidence has been adduced by the 2nd respondent-Insurance Company to show as to whether the deceased was slow in crossing the road, as held by the trial court, and also as to whether there was any negligence on the part of the deceased in crossing the road.

17. On the other hand, the evidence of PW2, who is an eye witness to the accident, coupled with the averments in the F.I.R.

and charge sheet, would show that the driver of the offending vehicle drove the vehicle in a rash and negligent manner.

18. In *SYED SADIQ v. DIVISIONAL MANAGER, UNITED INSURANCE COMPANY*¹ the Apex Court, while dealing with the issue of contributory negligence, held that merely because the accident took place in the middle of the road, one cannot come to a conclusion that there was negligence on the part of the injured, in the absence of any evidence to prove the same. It would be useful to extract the relevant portion of the said judgment, which is as under:

“28. On the matter of extent of contribution to the accident, it is held by the Tribunal that the appellants/claimants herein should have taken utmost care while moving on the highway. Looking at the spot of the accident, the Tribunal concluded that the appellants/claimants were moving on the middle of the road which led to the accident. Therefore, the Tribunal concluded that though the tractor has been charge sheeted under Sections 279 and 338 of IPC, but given the facts and circumstances of the case, the appellants/claimants also contributed to the accident to the extent of 25%. The High court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellants/claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants/claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence,

¹ 2014 (2) ALD 133 (SC)

which has been upheld by the High Court, is set aside.

19. In *MEERA DEVI AND ANOTHER v. HIMACHAL PRADESH ROAD TRANSPORT CORPORATION AND OTHERS*², the Apex Court, in para (10) of its judgment, held as under:

“10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.”

20. From the judgment referred to above, it is clear that in order to prove that there was contributory negligence, cogent evidence must be adduced by the party pleading the same. In the case on hand, no evidence has been adduced by the Insurance Company, either oral or documentary, to show that there was contributory negligence on the part of the deceased. In fact, neither the scene of offence panchanama nor the sketch of the scene of offence came to be marked, to show as to how and where the accident took place.

21. Having regard to the circumstances stated above, we feel that the finding of the trial court, holding that the deceased was

² (2014) 4 Supreme Court Cases 511

also negligent and contributed to the accident, cannot be accepted.

22. Coming to the quantum of compensation, though the learned counsel for the appellants tried to contend that the deceased was working as a driver and earning substantial income, but, no evidence has been adduced to prove the same. His argument is mainly based on the employment of the deceased in Saudi Arabia during the period 1992 to 2002. However, no evidence has been placed on record to show the income which the deceased earned in Saudi Arabia. Though a plea was sought to be taken that the amounts earned by him were credited to his account by way of cheques, no cogent evidence is placed on record to prove the same. The evidence on record does not establish that the deceased was working as a driver at the time of the accident. Merely because he was holding the licence to drive a heavy vehicle, does not by itself *ipso facto* lead to the conclusion that he was working as a driver at the time of the accident.

23. Having regard to the age and built of the deceased, and taking into consideration the amount being paid to a daily wage male labourer, we feel that it would be just and proper to fix the income of the deceased @Rs.4,750/- per month. Since the age of the deceased was (44) years at the time of the accident, the suitable multiplier to be applied would be (15), in view of the judgment in *SARLA VERMA v. DELHI TRANSPORT CORPORATION*³.

³ (2009) 6 SCC 121

24. Coming to the future prospects, the Apex Court, in *NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS*⁴, categorically held that in the case of a person who is self-employed, having no fixed income, and aged above 40 years at the time of the accident, 25% of the income earned should be added to his income. Therefore, 25% of Rs.4,750/- should be added to the income of the deceased, for calculating the loss of dependency.

25. Since the dependents are three in number, the trial court deducted 1/3rd towards personal expenses. This is not seriously disputed by the learned counsel for the appellants.

26. In view of the above, the claimants/petitioners are entitled to the following amounts:

Salary income of the deceased : Rs. 4,750/- per month

25%future prospects : Rs.1,188/-

Total: Rs. 5,938/-

Less: 1/3rd towards personal expenses

(5,938/- x 1/3) : Rs. 1,980/-

Rs.3,958/-

Multiplier adopted is 15

(Rs.3,958/- x 12 x 15) : Rs.7,12,440/-

⁴ (2017) ACJ 2700

27. Coming to the amounts awarded under conventional heads, though the trial court awarded Rs.30,000/- towards loss of estate and consortium and Rs.2,000/- towards funeral expenses. In view of the judgment in *PRANAY SETHI*'s case, the claimants are entitled to a sum of Rs.70,000/- under the said heads.

28. Thus, in all claimants are entitled to Rs.7,82,440/- (Rs.7,12,440/- + Rs.70,000/-). Accordingly, the appeal is allowed in part, enhancing the quantum of compensation from Rs.3,94,400/- to Rs.7,82,440/-, to be apportioned in the manner ordered by the trial court. However, no order as to costs in the appeal. As a sequel, miscellaneous applications pending, if any, shall stand closed.



 JUSTICE C. PRAVEEN KUMAR

 JUSTICE T. RAJANI

26.07.2018
DMG