

HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.3031 of 2007

ORDER:

The appellants/claimants, aggrieved by the dismissal order dated 03.10.2007 passed in M.V.O.P.No.1341 of 2001 on the file of the Chairman, Motor Vehicle Accident Claim Tribunal (District Judge), Warangal, preferred this appeal.

2. The case of the claimants is as follows:

i. On 18.04.2001, the deceased Chandramouli, along with his brother Venkateswarlu, while coming from Katrial Village to Warangal on Suzuki motor cycle bearing No. AP9Q 7681 and when reached Ushodaya Oil Mill, Timmapur Cross – Roads, the lorry bearing No. ADM 9289 driven by its driver in a rash and negligent manner with high speed dashed against the motor cycle of the deceased from behind resulting the deceased sustaining grievous head injury and other multiple injuries all over the body; and, immediately, shifted to MGM Hospital, Warangal for treatment and for better treatment, he was shifted to Hanamkonda where he succumbed to injuries while undergoing treatment.

ii. Due to sudden death of Chandramouli, appellant No.1 lost her consortium, appellant Nos.2 and 3 lost the love and affection of their father; appellant Nos.4 and 5 lost the

support of their son at their old age; and, hence, claimed compensation of Rs.5,85,000/-.

3. Respondent No.2 filed counter denying the averments of the claim petition contending that the claimants have to prove that the offending lorry was validly insured; and the claim is exorbitant.

4. Respondent No.3 filed counter admitting the ownership of the offending lorry but disputed rash and negligent driving by the driver of the lorry.

5. The Tribunal, having considered the material on record, settled the following issues for trial:

1. Whether the accident was due to the rash and negligent driving of the driver of the vehicle?
2. Whether the petitioners are entitled to claim compensation, if so, from whom and to what amount?
3. To what relief?

6. In support of their claim, the claimants examined PWs.1 and 2 and marked Exs.A.1 to A.5. On behalf of the respondents, no oral and documentary evidence was adduced.

7. Now, the point that arises for determination is whether the order/judgment of the Tribunal suffers with legal infirmities warranting interference in the appeal?

8. Learned counsel for the appellants contended that the Tribunal erred in not considering the facts and circumstances of the case in proper perspective and there is evidence of PW.2, besides documentary evidence Exs.A.1 to A.5,

to establish that there is rash and negligence on the part of the driver of the lorry bearing No.AP 9Q 7681 and that there is nexus between the accident and death. Merely because the statement of PW.2 is not recorded by police during investigation and since he is an eye-witness produced before the Court, the Tribunal ought to have considered the evidence of PW.2 and awarded compensation instead of dismissing the O.P.

8. In the counter filed by respondent Nos.2 and 3, they denied rash and negligence besides contending that the amount claimed is exorbitant.

9. PW.1 is no other than claimant No.1, wife of the deceased. The evidence of PW.1 remained unchallenged and establish that she is the wife; petitioner Nos.2 and 3 are children; and petitioner Nos.4 and 5 are the parents of deceased Chandramouli. Though PW.1 was cross-examined at length, there is no cross-examination touching the relationship between the deceased and the claimants, more so, during cross-examination PW.1 clearly stated that petitioner Nos.4 and 5, parents of the deceased, were still living with PW.1. In the facts and circumstances of the case, the evidence of PW.1 establish that claimants are wife, children and parents of the deceased Chandramouli, who are the dependents on the income of the deceased.

10. The Motor Vehicles Act is a beneficial legislation. Section 166 of the Motor Vehicles Act contemplates that all or any of the legal representatives of the deceased can claim compensation against the insurer and insured under Section 147 of the Act in a claims Tribunal constituted under Section 165 of the Act.

11. Admittedly, PW.1, wife of the deceased, is not an eye-witness to the accident. To substantiate the claim, and to prove rash and negligence, the claimants examined Sri J.Sudershana Chary as PW.2, whose evidence is that on 18.04.2001 while he, along with Nageshwar Rao, was coming from Wardannapet to Warangal and when they reached near Ushodaya Oil Mills near Thimmapur Cross Road at about 4.00 p.m, the deceased Chandramouli, along with his brother, S.Venkateswarlu was coming from Warangal on Suizuki motor cycle bearing registration No.AP9Q 7681, a lorry bearing Registration No. ADM 9289 came from opposite direction in a rash and negligent manner with high speed and dashed the Suzuki motor cycle on which the deceased was travelling as a pillion rider.

12. Ex.A.1, a copy of the FIR, was presented by Sri S.Venkateswarlu @ Venkatesh who lodged the complaint and specifically stated that he, along with his younger brother S.Chandramouli, was proceeding on Suizuki motor cycle

bearing registration No.AP9Q 7681 towards Warangal and when reached near Ushodaya Oil Mills near Thimmapur Cross Road at about 4.00 p.m, a lorry bearing Registration No. ADM 9289 came from opposite direction in a rash and negligent manner with high speed. The said complaint was presented on 20.04.2001 at 9.00 hrs in respect of the accident that occurred on 18.04.2001 at 4.00 p.m. In the inquest report under Ex.A.3, the doctor opined that the deceased succumbed to injuries while undergoing treatment on 20.04.2001 at 1.00 p.m.

13. The investigating officer after thorough investigation filed charge sheet - Ex.A.2, wherein it is specifically stated that the complainant is none other than the brother of the deceased Chandramouli, and the lorry came in opposite direction and dashed the motor cycle ridden by the complainant. On 10.09.2001 in Ex.A.2 – Charge sheet, it was specifically stated that the husband of owner of the offending vehicle produced respondent No.1 before the Police Station and after recording the statement of the husband of the owner send him for remand.

14. The Motor Vehicle Inspector, who inspected the lorry, issued Ex.A.4 Motor Vehicle Inspector report, whereunder he opined that the accident was not due to any mechanical defect of the vehicle. The facts and circumstances of the case clearly establish that PW.2 is an eye-witness to the accident.

Merely because, he was not examined by police and cited as a witness in the charge sheet file, it does not mean that PW.2 is not an eye-witness to the accident.

15. The Tribunal missed the eye while considering the facts in issue besides the ocular evidence of PW.2. Still there is documentary evidence under Ex.A.1 – FIR, Ex.A.2 – remand report, Ex.A.4 – Motor Vehicle Inspector's Report and Ex.A.5 – Charge sheet. The accident, as per the material available on record, occurred on 18.04.2001 at 4.00 p.m. The deceased succumbed to injuries in the early hours of 20.04.2001 while undergoing treatment which was confirmed by doctor at 1.00 p.m. The charge sheet – Ex.A.5, coupled with Ex.A.2, remand report, clearly establish that the husband of the owner of the lorry produced respondent No.1 – driver of lorry on 10.09.2012 and he was sent for remand. Therefore the investigating officer clearly found that the driver of the lorry drove with high speed in a rash and negligent manner and dashed the motor cycle from behind due to which, the deceased who was a pillion rider, died. All the facts clearly prove that the accident occurred due to rash and negligent driving of the lorry driven by respondent No.1 belonging to respondent No.3 – owner of the vehicle. The Tribunal erroneously dismissed the O.P. with a finding that the claimants failed to discharge the burden of proving rash and

negligent driving which finding is perverse and suffers from legal infirmity warranting interference.

16. With regard to the age of the deceased, there is evidence of PW.1 who spoke that her husband was aged 27 years at the time of accident and was an electrician having own electrical shop at JPN Road, Warangal and used to earn Rs.5,000/- p.m. The claimants, admittedly, did not file any proof of income or age of deceased Chandramouli. In Ex.A.1 – FIR, Ex.A.3 – Inquest report and Ex.A.5 – Charge sheet, the age of the deceased was shown as 28 years. There is no rebuttal evidence produced by the respondents to rebut the age and income of the deceased. In the absence of rebuttal evidence, I have no hesitation to believe the evidence of PW.1 and Exs.A.1 to A.5 to come to the conclusion that the deceased was aged 28 years on the date of accident and working as electrician earning Rs.5,000/- p.m.

17. As per the judgement of **Sarla Verma v. Delhi Transport Corporation**¹, for the age group between 25 to 30 years, Multiplier-17 has to be applied. Taking into consideration the age of deceased as 28 years, the appropriate multiplier is '17'. Since the dependents are 5, 1/4th has to be deducted towards personal expenses, had he been alive. Taking the monthly income of the deceased at Rs.3,000/- p.m.

¹ AIR 2009 SC 3104

it comes to Rs.36,000/-. After deducting 1/4th towards personal expenses, the amount would be Rs.27,000/- p.a. and, by applying multiplier 17, it comes to Rs.27,000 x '17' = Rs.4,59,000/-. In addition, claimants are entitled to Rs.5,000/- towards funeral expenses; Rs.15,000/- towards loss of consortium; Rs.15,000/- towards loss of estate. Thus, in total, the claimants are entitled to Rs.4,94,000/-.

18. Accordingly, the appeal filed by the claimants is allowed partly setting aside the award dated 03.10.2007 in O.P.No.1341 of 2001 on the file of Chairman, Motor Vehicle Accident Claim Tribunal (District Judge), Warangal.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand dismissed.

N.BALAYOGI,J

Dt:12.11.2018
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