

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.2473 of 2012

JUDGMENT:

The respondents 1 and 2 / claimants filed O.P. No.620 of 2010 under Section 166 of Motor Vehicles Act, 1988 claiming compensation of 4,00,000/- for the death of Dudekula Raja Kullayappa in road accident involving lorry bearing No.AP02-W-4167 of which respondent No.1 is the owner and the respondent No.2 is the insurer.

The Tribunal held that there is 30% negligence on the part of the motor cyclist and apportioned contributory negligence of 70% to the driver of the offending lorry in the accident. Though PW.2 deposed that he is paying Rs.5,000/- per month to the deceased, the Tribunal took notional income as Rs.3,600/- per month. Having considered the findings on record particularly, the date of birth mentioned in Ex.A5 of the deceased as 13.3.1989 assessed the age of deceased as 21 years and applied Multiplier-18 and deducted 1/3rd of the income towards personal expenses of the deceased being unmarried and awarded compensation of Rs.3,71,700/- against the appellant and respondent No.3 jointly and severally with subsequent interest at 8% per annum from the date of petition till the date of realization.

2. Aggrieved by the said Award and Decree, dated:4.5.2012 of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Anantapur, the General Insurance Company filed this Appeal and its

contention is that the Tribunal failed to see that the negligence should be atleast at the ratio of 50% as the accident occurred due to the triple riding of the motor cycle.

3. It is further contended that the Tribunal ought to have taken 50% of the income of the deceased towards his personal expenses and should have applied Multiplier-15 in pursuance of *Sarla Varma's* case. Further contention is that since the father of the deceased is alive, mother cannot be dependent on her son. The amount awarded is highly excessive.

4. While the deceased and his colleague are proceeding on Hero Honda motor cycle at about 1.30am on 04.8.2010 reached near Kuthaleru, while overtaking the stationed lorry, the other vehicle came in opposite direction and due to lighting of that vehicle, the motor cycle in which the deceased was travelling dashed the stationed offending lorry on back side. As a result, the deceased who was pillion rider sustained grievous injuries and died on the spot.

5. The employer-PW.2 rushed to the spot and gave a complaint against the offending lorry to Singanamale police. At the time of accident, the deceased was working as private clerk under PW.2, lorry broker at Tadipatri and he was 21 years old. Respondent No.1 remained ex parte.

The appellant/respondent No.2 filed written statement contending that the offending lorry bearing No.AP.02-W-4167 was

not insured with the appellant. Without having any license, the deceased drove the motor cycle and dashed the lorry stopped for repairs by the side of the road and that there was no negligence on the part of the lorry driver. There was contributory negligence on the part of the deceased.

6. The Tribunal having considered the pleadings and having heard, following issues are framed for trial:

(1). Whether the accident occurred on 04.8.2010 due to rash and negligent driving of the driver of lorry bearing No.AP.02-W-4167 and caused death of the deceased?

(2). Whether the petitioners are entitled for compensation and if so to what amount and from which respondent?

(3). To what relief?

7. In support, to establish the claim, PWs.1 and 2 are examined and Exs.A1 to A5 are marked on their behalf. Respondent No.2 examined its officer as RW.1 and marked Ex.B1 policy on their behalf.

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

Whether the award and decree suffer from legal infirmities warranting interference in the Appeal?

9. The contention of the appellant is that there is contributory negligence in the ratio of 50%.

10. Whereas, respondents 1 and 2, *per contra*, contended that there is no negligence on the part of the deceased, more particularly, finding of the Tribunal is legal.

11. The 1st claimant himself was examined as PW.1 and the senior Manager (legal) of the appellant was examined as RW.1. There is no dispute with regard to accident occurred on 04.8.2010 at 1.30am and involvement of lorry bearing No.AP.02-W-4167, Suzuki Samurai motor cycle No.AP-04-E-7653 and the Hero Honda Shine motor cycle No.AP-02-F-new. From the clinching evidence of PW.1, it is clear that the claimants are the wife and husband and parents of the deceased Dudekula Raja Kullayappa and there is no dispute that claimants are parents of deceased and further it is not in dispute that the deceased was unmarried. One Kolimi Muskan is the owner of motor cycle and the deceased was working under PW.2-Ismail.

That, the evidence of PW.1 is very clear supported by Ex.A1-copy of the FIR and Ex.A4-charge sheet that PW.2 presented Ex.A1 complaint immediately after he came to know of the accident. As per the evidence of Ex.A4-charge sheet and Ex.A3-inquest report P.W.2 is an eye witness to the accident because he was proceeding on motor cycle bearing No.AP-04-E-7653 while the deceased and another Badvel Mohammed Fayaz were proceeding on new Hero Honda shine motor cycle bearing No.AP-02-F and according to PW.1, at the time of accident, Mohammed Fayaz was riding the motor cycle. On 04.8.2010, at 1.30am while they were proceeding on motor cycle, the lorry bearing No.AP-02-W-4167 was stationed on the middle of the road without taking any precautionary measures like putting on-off danger lights and diversion stones on the road and therefore, motor cycle hit on the back side of the

stationed lorry bearing No.AP-02-W-4167. On the next day, PW.2 went to the Singanamala police station and submitted complaint against driver of the said lorry bearing No.AP-02-W-4167 who caused the accident, without taking any precautionary measures. Though PW.2 was cross-examined at length, nothing could elicit from him to discard his evidence. More-so, Exs.A1, A3 and A4 support the contention of the petitioner that PW.2 is an eye witness to the accident. He was also following the motor cycle of the deceased and the lorry parked on the middle of the road bearing No.AP-02-W-4167, without taking any precautionary measures, as a result of which, the motor cycle of the deceased along with another Badvel Mohammed Fayyaz hit the stationed lorry, resulting death of two persons.

12. The Tribunal having considered oral and documentary evidence and elaborate discussion came to conclusion that PW.2 in FIR-Ex.A1 has not mentioned name of driver of the Hero Honda motor cycle. Driving license of the deceased is filed and marked as Ex.A5 which ultimately found that the deceased was pillion rider on the motor cycle. PW.2 failed to explain the delay of seven hours though the police station is eight kilometres from the scene of offence. It is further observed that the rough sketch of the scene of offence and the report of motor vehicle Inspector are not filed to test the veracity of the bald allegation that the offending lorry was stopped in the middle of the road and ultimately found that it is a clear case of contributory negligence of Mohammed Fayaz who was driving motor cycle to the extent of 30% and the lorry driver

negligence was apportioned at 70% on the basis of crime. To rebut such finding and evidence, there is no rebuttal evidence produced by the respondent No.2-Senior Manager (legal), who was examined and is not an eye witness to the accident. In the absence of any such rebuttal evidence, the evidence of PW.1 and 2 and Exs.A1, A3 and A4, I am of the considered view that basing on the material available on record (oral and documentary), the Tribunal rightly came to conclusion that the negligence on the part of the driver of the motor cycle in which the deceased was travelling as pillion rider assessed at 30% and since the lorry was stationed without any precautionary measures, assessed the liability of the driver of the offending lorry at 70%. Thus, I do not find any error or illegality in such finding of the Tribunal warranting interference of the Court in the Appeal.

13. Now, with regard to age and income of the deceased, there is corroborating evidence of PWs.1 and 2. They have deposed that the claimants have son of 21 year old, working as Clerk under PW.2. In FIR-Ex.A1, there is a mention that the deceased was working as Clerk under PW.2 who is a Transport broker. The evidence of PW.2 is that he was paying an amount of Rs.5,000/- per month but no document is produced to prove that he was receiving Rs.5,000/- per month and PW.2 was paying Rs.5,000/- per month towards salary of the deceased. Though PW.2 deposed that he was paying Rs.5,000/- to the deceased towards salary, in the absence of any documentary proof, the Tribunal assessed monthly income of Rs.3,600/- which is

very reasonable income and therefore, does not warrant any interference particularly in the absence of any rebuttal evidence.

14. As per Ex.A5, driving license of the deceased was apportioned on 13.3.1989, accident was occurred on 04.8.2010 and accordingly, the deceased was 21 year old by the date of the accident and death. As per ***Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and another*** (2009 ACJ 1298) which the appellant relies, relevant Multiplier for the age group of 21-25 is '18'. So, the Tribunal rightly applied the Multiplier-18.

15. Undisputedly, the deceased was unmarried and bachelor and so, the Tribunal deducted 1/3rd towards personal income of the deceased. But as per ***Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and another*** (2009 ACJ 1298), if the deceased is survived by parents and siblings, only the mother would be considered as a dependant and 50% as the contribution to the family. In view of the foregoing discussion, 50% has to be deducted from his monthly income towards his personal expenses, if that be so, the contribution to his family would come to Rs.1,800/- per month or Rs.21,600/- per annum. Then the loss of dependence for 30% of negligence would come to Rs.21,600/- x 18 x 30%= Rs.1,16,640/-.

Besides this, as per the decision of the Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY***

SETHI AND Ors (2017 ACJ 2700), under conventional heads, namely, loss of estate, and funeral expenses, the respondent No.2 /claimant No.2 is entitled to receive Rs.15,000/-,and Rs.15,000/- respectively. Further, the respondent No.2/claimant No.2 is also entitled to receive Rs.5,000/- towards transport charges.

Thus, in total, respondent No.2/claimant No.2 is entitled to receive total compensation of Rs.1,51,640/-.

16. In the result, the Appeal is allowed, setting aside and modifying the Award by reducing the compensation amount from Rs.3,71,000/- to Rs. 1,51,640/- with proportionate costs and interest at the rate of 8% per annum from the date of petition i.e., 02.11.2010 till the date of realization.

17. Coming to the entitlement to receive compensation, it is to be seen that normally the compensation amount is being paid to the legal representatives on account of untimely death of their ancestor. The dependency of the legal representatives is a question to be considered and does not mean only the dependants can claim compensation. The compensation being the amount for the loss to the estate of the deceased, it has to be considered as to whether the legal representatives had been put to loss because of the death of the deceased. Wherever the deceased is an earning member, naturally his savings is an accumulation for the estate which can be divided by the legal representatives had been put to loss of the earning of the deceased, the legal representatives are also entitled for the compensation.

More over, the aged parents in many a house are the watch dogs for the entire house, servants and the grand children except a few exceptional cases. When the claimants had lost such valuable services of their mother they are entitle for compensation. The loss cannot be substituted by any other confident or responsible person either in the family or by appointing a servant. The liberal view is to go to legal heirs of the deceased who died intestate and if the heirs are mother, sisters married and unmarried, married sister not being any longer dependant but for on her husband to get anything and thus, that dependency goes to the mother and the unmarried sisters only. The decisions rendered by various Courts answered on the principle that when there are dependants and non-dependants of deceased among the legal heirs, the dependants to be awarded compensation and not to the non-dependant legal heirs. In *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and another* case, it was held by the Apex Court that if father is likely to have his own income, he will not be considered as dependant and the mother alone will be considered as dependant. In the case on hand, the father of the deceased was working as driver and has his own income. Hence, the mother of the deceased is considered to be entitled to receive compensation.

18. The appellant herein and 3rd respondent-owner of the lorry are directed to deposit the compensation amount awarded herein above within one month from the date of receipt of a copy of this judgment, after adjusting the amount, if any already paid.

On deposit, the respondent No. 2/claimant No.2 is permitted to withdraw the same, if not already withdrawn.

Advocate Fee is fixed at Rs.2000/-.

19. Miscellaneous petitions pending consideration, if any in the appeal, shall stand closed in consequence.

JUSTICE N.BALAYOGI

Dated: 29-6-2018

gnr



HONOURABLE SRI JUSTICE N. BALAYOGI



M.A.C.M.A. No.2473 of 2012

Dated: 29-6-2018

gnr