

THE HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A No.1809 of 2010

JUDGMENT:

Against the Award, dated 23.07.2009, in M.V.O.P.No.616 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Tirupati (for short "the Tribunal), granting compensation of Rs.3,00,000/- to the claimants therein in respect of death of the deceased, by name, P.Manohar, in a motor accident that occurred on 26.03.2007, and making the Insurance Company liable to pay such amount along with the owner of the crime vehicle TATA Spacio bearing registration No.AP03U-7913, the present appeal is filed.

The appellant is the 2nd respondent in MVOP.No.616 of 2007. Respondents Nos.1 to 3 are the wife and daughters of the deceased. Respondent No.4 is the owner of the crime vehicle TATA Spacio bearing registration No.AP03U-7913. The Insurance Company contends that it has been wrongly held liable to pay the compensation to the claimants along with the owner of the crime vehicle by the Tribunal. The Tribunal ought to have apportioned the negligence on the part of the deceased also, as the accident took place due to head on collision between TVS XL bearing registration No.AP004C-8185 driven by the deceased at the relevant point of time with the vehicle TATA Spacio bearing registration No.AP03U-7913. As the deceased is equally responsible for occurrence of the accident, the Tribunal ought to have apportioned the negligence as against him and the driver of the vehicle TATA Spacio bearing registration No.AP03U-7913. The Insurance Company further contends that in Ex.A3-Postmortem Certificate, it is clearly recited that the deceased was in drunken condition at the time of the accident. In Ex.A3-Postmortem

certificate, it is opined by the Doctor that the death of the deceased occurred due to hypoxic encephalopathy (brain dis-function due to oxygen deficiency in body tissues). The Insurance Company also contends that the death of the deceased has not occurred due to the injuries he received in the accident. The deceased survived for more than 25 to 28 days after the occurrence of the accident. As respondents Nos.1 to 3/claimants have failed to prove the connectivity between the accident and the death of the deceased, the Tribunal ought to have dismissed their claim. But the Tribunal instead of dismissing their claim, allowed their claim in toto. Therefore, the present appeal is filed by the Insurance Company seeking indulgence of this Court.

I have gone through the order impugned in the present appeal. As the prime contention of the Insurance Company is that the deceased contributed in the occurrence of the accident and was equally negligent, the evidence of PW 2 needs to be re-appreciated.

PW 2-K.Balasubramanyam states in his evidence that on 26.03.2007 at about 7.10 p.m while the deceased was proceeding on his TVS XL bearing registration No.AP004C-8185 on the extreme left side of the road, near Gundlaguttapalli village, on Piler-Chittoor Road, the two-wheeler of the deceased was hit by TATA Spacio vehicle bearing registration No.AP03U-7913, which came towards him in a rash and negligent manner. As a result of the said hit, the deceased fell down and received multiple injuries. Immediately after the accident, the deceased was shifted to SVRRGG Hospital, Tirupati for treatment. From there, the deceased was shifted to SVIMS Hospital, Tirupati and there he died on 23.04.2007.

The Insurance Company, which has come up with the contention that there was a head on collision between the two vehicles driven by the deceased and the driver of TATA Spacio bearing registration No.AP03U-7913, therefore, the Tribunal ought to have apportioned the negligence as against the deceased and the driver of TATA Spacio bearing registration No.AP03U-7913, had not adduced any evidence to support of its aforementioned contention.

The evidence of PW 2 is clear to the effect that while the deceased was proceeding on his TVS XL bearing registration No.AP004C-8185 on the extreme left side of the road, near Gundlaguttapalli village, on Piler-Chittoor Road, the two-wheeler driven by him was hit by the vehicle TATA Spacio bearing registration No.AP03U-7913 which came in his opposite direction in a rash and negligent manner. Though PW 2 is cross-examined at length, no information useful to the Insurance Company was brought out. As the evidence of PW 2 and Exs.A1 and A2 clinchingly establishes the fact that due to the negligent driving of the vehicle TATA Spacio bearing registration No.AP03U-7913 by its driver, the two-wheeler on which the deceased was proceeding on the left side of the road, was hit near Gundlaguttapalli village, on Piler-Chittoor Road, the Tribunal came to the opinion that the driver of the crime vehicle TATA Spacio bearing registration No.AP03U-7913 was negligent and on account of negligent driving of it by him the accident took place.

Coming to the other contentions raised by the Insurance Company that the deceased survived for more than 28 days after the accident and in Ex.P3-Postmortem certificate it was mentioned that the death of the deceased occurred due to hypoxic encephalopathy; As respondents Nos.1 to 3/claimants failed to establish that the death of the deceased occurred

due to the injuries received by him, the Tribunal ought to have dismissed their claim petition. But the Tribunal, instead of dismissing their claim petition, granted compensation of Rs.3,00,000/- as claimed by them, is concerned, the evidence of PW 1 is that immediately after the accident, the deceased got shifted to SVRRGG Hospital, Tirupati for treatment and from there he was shifted to SVIMS Hospital, Tirupati and there he died on 23.04.2007 due to the injuries sustained by him. The factum of shifting of the deceased to SVRRGG Hospital, Tirupati immediately after the accident and shifting of the deceased from SVRRGG Hospital to SVIMS Hospital, Tirupati was not denied by the Insurance Company. In fact, PW 2, the eyewitness to the accident also spoke about these facts in his evidence.

The case sheet, based on which the Doctor, who issued Ex.A3-postmortem certificate, mentioned in postmortem certificate that the deceased consumed alcohol prior to the accident, was produced before the Tribunal or before this court to hold that the deceased was in drunken condition at the time of the accident. The observation made by the Doctor who issued the postmortem certificate mentioning that the absence of lacerations over the dead body of the deceased would indicate that the crime vehicle was going at lower speed also had no basis. Neither the case sheet nor the material based on which such opinion was given by the Doctor, who issued the postmortem report, are available in the case file. If really the contention of the Insurance Company that the deceased was in drunken condition at the time of the accident, it would have summoned the case sheet, but it was not done.

The undisputed fact is that the deceased was under treatment at SVIMS Hospital, Tirupati till his death. The factum of shifting of the

deceased to SVIMS Hospital, Tirupati where he died was clearly deposed by PWs 1 and 2. The Sub-Inspector of Police, who registered the case against the driver of the crime vehicle, had altered the section of law to Sec.304-A IPC from Sec.337 IPC based on the information received by him from SVIMS Hospital, Triupati.

Ex.A3-postmortem report would disclose that the deceased sustained 15 abrasions and a contusion, measuring 4 x 4 cm over left frontal area of scalp underneath the wound No.1. In Ex.A3 it was mentioned that there was sub-arachnoids hemorrhage over right parietal lobe and if the said injury and the other injuries caused to the deceased were not so serious in nature, the Doctor would not have taken for such a long period of 25 days for his treatment. The deceased was in the hospital till his death and was being provided with treatment. His death occurred while taking treatment in SVIMS Hospital, Tirupati.

Taking note of all the above facts and non-summoning of the case sheet, based on which, certain observations were made by the Doctor, who issued Ex.A3-postmortem report, the Tribunal believed the existed material to hold that there was nexus between the accident and the death of the deceased.

The well considered award passed by the court below granting compensation of Rs.3,00,000/- to respondents Nos.1 to 3/claimants cannot be meddled with, as it could be proved by them that the deceased was provided treatment in SVIMS Hospital, Tirupati for more than 25 days, during which time, they incurred Rs.64,608/- towards medical expenditure. The Tribunal, taking into consideration of the evidence of PW 1, who spoke about the income of the deceased as a Manager in a Wood Depot at Chittoor, had assessed the income of the deceased per

month at Rs.3,000/- and per annum Rs.36,000/-. On duly deducting 1/3rd of it towards his personal expenditure, the Tribunal has computed the contribution of his income to his family at Rs.24,000/- per annum and applying a multiplier '13' (as the deceased was aged about 50 years by the date of his death), awarded the compensation of Rs.3,12,000/- under the head of "loss of Income contribution of the deceased to his family". Though the Tribunal felt that there is justification in the claim made by the claimants, it restricted their claim to Rs.3,00,000/-.

As the compensation amount of Rs.3,00,000/- awarded to the claimants appears to be not excessive, there cannot be hesitation for this court to hold that there is no merit in the contention of the Insurance Company that the amount awarded is on higher side.

In the light of my aforementioned discussion, the appeal filed by the Insurance Company deserves to be dismissed and the same is hereby dismissed accordingly.

Pending miscellaneous applications, if any, shall stand closed in consequence. No costs.

J.UMA DEVI,J

Date: 26.12.2018
Dsr