

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 281 OF 2011

JUDGMENT:

This appeal is filed by the appellants/Insurance company under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award and decree dated 03.07.2007 passed by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda, in O.P.No.44 of 2006, whereby the Tribunal granted compensation of Rs.3,71,000/- against the claim of Rs.5 lakhs for the death of one M.Venkanna (hereinafter referred to as 'the deceased') in the motor vehicle accident occurred on 16.09.2005.

2. The respondents/claimants are the dependants of the deceased. The 1st respondent is the wife; 2nd and 3rd respondents are the children; and 4th and 5th respondents are the parents of the deceased. The claimants filed the claim petition for Rs.5 lakhs, alleging that the driver of the offending vehicle i.e., lorry bearing No.AP27U 2939 had driven the vehicle in a rash and negligent manner with high speed, came in opposite direction and dashed the tractor of the deceased, as a result of which the deceased and others sustained injuries. The deceased succumbed to the injuries on the same day while undergoing treatment at Government Hospital, Miryalaguda.

The respondents claimed compensation of Rs.5 lakhs for the death of the deceased against the 1st respondent – owner of the vehicle and 2nd respondent – National Insurance Company Limited, stating that the deceased was hale and healthy and used to earn Rs.5,000/- per month as a driver. He used to contribute his entire income to the family.

3. The 6th respondent, owner of the offending vehicle, remained *ex parte* before the Tribunal.

4. The appellant/2nd respondent filed counter denying the averments of the claim petition and disputed the age of the deceased, his earning capacity and his health condition. It is further averred that the compensation claimed was excessive and untenable.

5. Based on the pleadings, the Tribunal framed the following issues:

- 1) Whether the deceased Madosu Venkanna died in the road accident?
- 2) Whether the petitioners are entitled to claim compensation for the death of deceased? If so, what amount and from whom?
- 3) To what relief?

6. During the course of trial, on behalf of the respondents/claimants, PWs 1 and 2 were examined and got marked Exs.A.1 to A.5. On behalf of the appellant, Ex.B.1 –

copy of insurance policy was marked, but no oral evidence was adduced.

7. The Tribunal, based on the evidence of PWs 1 and 2 and Exs.A.1 to A.5, observed that while the deceased was driving the tractor and trailer bearing Nos.AP24-G-1392/1393 from Nagarjuna Sagar to Biram Village and when the tractor and trailer reached the village limits of Shettipalem Village, in the meanwhile a lorry bearing No.AP27U 2939 driven by its driver in a rash and negligent manner with high speed, came in opposite direction and dashed the tractor of the deceased, as a result of which the deceased and others sustained injuries and the deceased succumbed to injuries on the same day while undergoing treatment at Government Hospital, Miryalaguda. The police of Vemulapalli have registered a case in Crime No.101 of 2005 under Section 337, 338 and 304-A IPC against the driver of the offending lorry. Ex.A.1 is the FIR; Ex.A.2 is the Inquest report; Ex.A.3 is the PME report; Ex.A.4 is the Charge sheet and Ex.A.5 is the Accident information report. As the claim petition is filed under Section 163-A of the M.V. Act, the respondents/claimants need not prove that the accident occurred due to the rash and negligent driving of the offending vehicle.

8. The Tribunal had taken the income of the deceased as Rs.2,500/- per month as the 1st respondent/claimant failed to prove that the deceased used to earn Rs.5,000/- per month

as a driver, and thereby the Tribunal had taken the annual income of the deceased as Rs.30,000/- per annum and $1/3^{\text{rd}}$ was deducted from the annual income of the deceased towards personal expenses (Rs.30,000/- X $1/3$ = Rs.10,000/-). Then, the annual loss of dependency was assessed at Rs.20,000/- (Rs.30,000/- - Rs.10,000/-). The multiplier of “18” was applied as the age of the deceased was 32 years as per PME report and the compensation under the head of loss of dependency was arrived at Rs.3,60,000/- (Rs.20,000/- X 18).

9. In addition to the above, the Tribunal had awarded Rs.2,000/- towards loss of estate; Rs.2,000/- towards transportation and Rs.2,000/- towards funeral expenses. The Tribunal also awarded Rs.5,000/- to the 1st respondent-claimant towards loss of consortium. In all, the Tribunal awarded Rs.3,71,000/- towards compensation with proportionate costs and interest @ $7\frac{1}{2}\%$ per annum from the date of filing of the petition till the date of realisation. The Tribunal also held that both the respondents are jointly and severally liable to pay the compensation to the respondents/claimants.

10. Sri Kota Subba Rao, learned counsel appearing for the appellant, mainly contended that the accident occurred due to head on collision and due to the fault of the driver of the tractor and trailer bearing Nos.AP24G-1392/1393. There is a

contributory negligence on the part of the driver of the tractor and trailer, but the Tribunal erroneously held that the owner of offending vehicle i.e., lorry bearing No.AP27U 2939 and its insurer are liable to pay compensation to the claimants. The learned counsel would further contend that the owner and insurer of tractor and trailer are liable for the payment of compensation to the extent of limits under Workmen's Compensation Act irrespective of negligence on the part of the driver of the tractor and trailer and the same could not be decided in this appeal as the owner of the tractor and trailer bearing Nos.AP24G-1392/1393 and its insurer are not parties. The Tribunal wrongly applied the multiplier when the age of the deceased was 32 years at the time of accident and it is on higher side, and it is more than the multiplier fixed under Schedule-II appended to M.V. Act.

11. Per contra, Sri M.Madhava Reddy, learned counsel for the respondents/claimants would contend that the Tribunal categorically held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle i.e., lorry bearing No.AP27U 2939 based on the evidence of PW2 and Exs.A.1 to A.5. The said finding of the Tribunal cannot be found fault with, in the absence of any contra evidence.

12. Evidently, the offending vehicle dashed the tractor of the deceased. Therefore, the same could not be said to be head on collision. However, the Tribunal considering the evidence

before it rightly came to the conclusion that the accident took place due to rash and negligent driving of the driver of the offending vehicle i.e., lorry bearing No.AP27U 2939. The Tribunal applied the multiplier “18” taking the age of the deceased as 32 years as per Ex.A.3 – PME report. For the age group of 31 to 35 years, the multiplier “18” has to be applied as per the decision of the Hon’ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another*¹. The contention of the learned counsel for the appellant that the interest granted @ 7½% per annum is on higher side, is untenable.

13. For the reasons stated above and in view of the recent judgment of the Hon’ble Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others*², this Court felt that the compensation granted by the Tribunal could not be said to be excessive.

14. The appeal is accordingly dismissed. No order as to costs.

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

JUSTICE M.GANGA RAO

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¹ (2009) 6 SCC 121

² 2017(6) ALD 170 (SC)

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