

THE HON'BLE SRI JUSTICE M.GANGA RAO

MACMA No.24 OF 2011

JUDGMENT:

This appeal is filed by the appellant-Insurance Company against the judgment and decree dated 17.08.2010 passed in O.P.No.277 of 2007 whereby and whereunder the Additional Chairman, Accidents Claims Tribunal-cum-XX Additional Chief Judge, City Civil Court, Secunderabad, awarded compensation of Rs.4,38,100/- with proportionate costs and interest at 7% per annum in favour of respondents-claimants.

Brief facts of the case are that on 11.03.2007 at about 2.15 p.m. while the deceased-Govinda Naidu was proceeding as a pillion rider on scooter bearing No.AP 2154 belonging to one Sudhakar, after completing his duty and when he was passing from Airport to Shamshabad on the extreme left side of the road, meanwhile one private bus bearing No.AP9X 7299 belonging to L & T Company proceeding from Shamshabad road towards Airport came with high speed and dashed the scooter in opposite direction, due to which, the deceased and rider of the scooter fell on the road and received grievous injuries all over the body. Immediately, they were shifted to Apollo Hospital. The rider of the scooter died while he was being shifted to hospital and the deceased succumbed to injuries while undergoing treatment in the hospital on the same day.

Claimants, who are the father, mother and brother of the deceased respectively, filed claim petition under Section 166 of the Motor Vehicles Act, 1989 (for short 'M.V. Act') and Rule 475/1B of Motor Vehicle Rules read with Section 163-A and 140 (c) of the M.V. Act claiming compensation of Rs.10,00,000/- from the

respondents stating that the deceased was aged about 22 years, hale and healthy at the time of accident, working as a Security Guard in GMR Company Limited, earning Rs.7,000/- per month and contribute the same to the family members, who are purely depending on the income of the deceased. Before the Tribunal, the first respondent-owner of the insured vehicle set *ex parte*. Second respondent-Insurer filed counter denying the claim, liability and accident. The Tribunal based on the pleadings framed the following issues:

- 1) Whether the accident occurred owing to the rash and negligent driving of vehicle Private Bus bearing No.AP X 7299?
- 2) Whether the petitioners are entitled to any compensation, if so, to what amount and against whom? And
- 3) To what relief?

On behalf of the claimants, PWs 1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, RW.1 was examined and Exs.B.1 to B.4 were marked. Based on the evidence available on record, the Tribunal held that due to rash and negligent driving of the driver of the insured vehicle, the accident was occurred resulting in death of two persons and there was no contributory negligence on the part of the rider of the scooter. The Tribunal has taken the income of the deceased as Rs.4,088/- per month as per Ex.A.4-salary certificate and evidence of P.W.2. After deducting 1/3rd therefrom towards personal expenses, the Tribunal arrived the net income of the deceased at Rs.2,725/- and annual income at Rs.32,700/-. After applying the multiplier of '13', as per the schedule under the M.V.Act, the loss of dependency was arrived at Rs.4,25,100/-. That apart, the Tribunal granted Rs.10,000/- towards loss of love and affection,

Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation. Thus, in total the Tribunal awarded Rs.4,38,100/- as against the claim of Rs.10,00,000/-.

The learned counsel appearing for the appellant-Insurance Company would mainly contend that the Tribunal failed to appreciate that there was contributory negligence on the part of the rider of the scooter in which the deceased was travelling as a pillion rider. But, as seen from the evidence available on record, the appellant failed to establish contributory negligence on the part of the rider of the scooter by adducing proper evidence. Considering the evidence of P.W.2 direct witness and documents under Exs.A.1, A.2 and A.5 the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of the crime vehicle and there was no contributory negligence on the part of the rider of the scooter. In the absence of any material to prove the contra, the finding of the Tribunal in this regard cannot be interfered with.

The Tribunal has adopted the multiplier of '13' calculating the age of the mother of the deceased instead of adopting the multiplier according to the age of the deceased. However, in the absence of any appeal preferred by the claimants, this Court is of the view that the multiplier adopted by the Tribunal cannot be interfered with.

For the reasons stated above, this Court finds no irregularity or illegality in the impugned award warranting interference of this Court.

Accordingly, the appeal is dismissed confirming the judgment and decree dated 17.08.2010 passed in O.P.No.277 of

2007 by the Additional Chairman, Accidents Claims Tribunal-cum-
XX Additional Chief Judge, City Civil Court, Secunderabad.

Miscellaneous petitions pending in this appeal, if any,
shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

31.08.2018
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