

THE HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.2866 of 2009

JUDGMENT:

The appellant/respondent No.2, aggrieved by the award and decree dated:15.07.2008 in M.V.O.P.No.89 of 2006, passed by the Motor Accidents Claims Tribunal-cum-II Additional District, Kurnool, (for short, Tribunal) wherein the Tribunal awarded compensation of Rs.3,18,000/- with interest at 7.5% per annum from the date of the petition till actual deposit which will be paid by respondents 2 and 3 within 30 days from the date of the order, preferred this appeal.

2. The contention of the appellant is that, the vehicle insured with appellant/respondent No.2 was not involved in the accident. The Tribunal ought to have seen at the time of FIR lodged, at the instance of the father of one A. Yuvaraj, who drove the car and the same was registered against an unknown vehicle since either the co-passenger who died and A. Mahadev-father of A. Yuvaraj did not notice the particulars of the vehicle, alleged to have hit the car. Hence, the appellant/respondent is not liable to pay compensation.

3. It is further contended that the owner of the vehicle, at the time of accident on 2.6.2004 was P. Daulath Khan/respondent No.4 and subsequently ie., on 13.7.2004, the vehicle was sold to respondent No.3 and the appellant company is not liable to pay

compensation vide Ex.B1 insurance policy. It is further contended that the Tribunal having held that the name of the alleged eye-witness PW.2 did not figure in the inquest panchanama-Ex.A4 and charge sheet-Ex.A5, ought to have dismissed the claim petition. The Tribunal drawn adverse inference on the ground that the appellant company had not sought to contradict the findings recorded in Ex.A5-charge sheet.

4. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed before the trial Court.

5. The claim, in brief, is as follows:

That, on 01.6.2004, the deceased (Y. Nagaraj) was travelling with his employer A. Yuvaraj in Maruti Car bearing No.AP-21F-6469 belonging to the said A. Yuvaraj and were proceeding to Hyderabad on some office work. On the way, after they crossed Malliboinapalle village on high way road No.7, during early hours ie., on 02.6.2004 at 5.30am, an Eicher van bearing No.AP-26U-8674 belonging to respondent No.1 came in opposite direction driven by its driver in rash and negligent manner and hit the Maruti van and sped away. Y.Nagaraj died on the spot along with his employer. The driver of the car sustained injuries. On information, A. Mahadev, father of A. Yuvaraj came to the spot and gave a complaint to Jedcherla police, against the unknown vehicle since at that time, it was not

known to him that it is the respondent No.1's vehicle which involved in the accident.

That, after whole investigation, the police found that it was the vehicle of the respondent No.1 which was involved in the accident and due to rash and negligent driving of its driver, caused the accident and death of two persons, and he was charge-sheeted in the Court of law.

The deceased, Y. Nagaraj was 22 years old, Commerce Graduate and Post Graduate Diploma Holder in Computer Programming, working as audit clerk under A.Yuvaraj and drawing the salary of Rs.3,500/- per month, working for a private person, had bright future prospects being a Post Graduate Diploma Holder in Computer Programming and his sudden death not only caused personal loss to the parents but pecuniary loss, who were depending on him. The respondents 1 and 2 are jointly and severally liable to pay compensation.

6. The respondent No.1 set exparte. The respondent No.2 filed counter-affidavit contending that on 02-6-2004, the owner of Eicher van was one P. Daulath Khan/respondent No.3, who sold the van to respondent No.1 on 13.7.2004. The Insurance Company called upon the petitioners to prove their relationship with the deceased, his age, avocation and income and future prospects in life and how they are entitled to compensation. The driver of Eicher van was

not holding valid and effective driving licence. The respondent No.3 was subsequently brought on record and filed counter contending that he brought van on 13-2-2002, but it was under hire purchase from City Corporation Finance (India) Limited, Mumbai, through his office Sai Krishna Motors Limited, Nellore.

7. Basing on the pleadings, the following issues were settled for enquiry before the Tribunal:

(1). Whether the accident and the resultant death of Y. Nagaraj, had occurred due to the rash and negligent driving by the driver employed on the respondent No.1's Eicher Van bearing No.AP-26U-8674?

(2). Whether the petitioners are entitled to compensation, and if so, to what amount and from which of the respondents?

(3). To what relief the petitioners are entitled to?

8. In support of the claim of the petitioners, PWs.1 and 2 were examined. Exs.A1 to A8 were marked with consent.

9. The contention of the appellant is that as per FIR, the vehicle involved in the accident is unknown vehicle. At the time of accident ie., on 02.6.2004, the respondent No.3 was the owner and subsequently, it was sold to respondent No.1. Therefore, Ex.B1

does not cover the risk and that the Insurance Company is not involved in any accident.

10. Now, the point that arise for consideration is:

Whether the findings and conclusion and award of the Tribunal suffer from any legal infirmities warranting any interference?

11. On the other hand, the respondents / claimants contended that the material on record will establish that the accident was caused due to rash and negligent driving of the driver of Eicher Van bearing No.AP-26U-8674 which involved in the accident. PW.1 is the father of the deceased. His evidence is that, respondent No.2 is his wife and they have two children. Y. Nagaraj is the elder son, who was 21 years by the date of accident. Since petitioners 1 and 2 are parents, they certainly aspire dependency on their elder son-deceased Y. Nagaraj. He speaks that his son met with accident due to rash and negligent driving of Eicher van driver bearing No.AP-26U-8674 and respondent No.2 is the insurer of the said van. Thus, all the respondents are jointly and severally liable to pay compensation.

12. Thereafter, there is an evidence of PW.2 whose evidence is that, at the time of accident, himself, (deceased)-Y. Nagaraju and his owner-A. Yuvaraj (deceased) and driver left to Adoni in Maruti

Car No.AP-21-F-6469, to go to Hyderabad for office work and when they crossed Malleboinipalli village on national highway Road.No.7 at about 5.30am on 2.6.2004, Eicher van bearing No.AP-21U-8674 came in opposite direction and hit Maruti car, in which they were proceeding. As a result, Y. Nagaraj and his employer-Yuvaraj sustained injuries and died on the spot. During the cross-examination, PW.2 stated that the deceased Nagaraj is in no way related to him. He only knows that he is working under Yuvaraj. Y. Nagaraj is not even his friend. He was travelling along with the deceased in Maruti car at the time of accident. PW.2 is a Mechanic by profession. He informed the father of the A. Yuvaraj over telephone about the accident and he is not aware that who has complained to the police about the accident. He further stated that, he was not examined by any police officer about the accident. Even though he received injuries, he has not taken treatment in any hospital. After the accident, he left the place due to fear. The suggestion is that on 01.6.2004, he was not travelling in Eicher van. That, if he was really present, his name should have been figured in criminal case record. Only to help the petitioners in obtaining compensation, he was given evidence even though he was not an eye witness. He do not know the registration number of the van for the cause of accident. Ex.A1 is the certified copy of FIR in Cr.No.96/04. Ex.A5 is the certified copy of charge sheet in C.C. No.352/02 and Ex.A4 is the certified copy of inquest panchanama.

13. A perusal of Ex.A1-certified copy of FIR in Cr.No.95/04 of Jedcherla police station go to suggest that Sri A. Mahadev gave the complaint on 2.6.2004 at 11.00 hours with regard to the accident that occurred at 5.30am wherein the father of Yuvaraj presented the report and stated on 1.6.2004, his son Yuvaraj and his assistant Y. Nagaraj left to Adoni in Maruti Car No.AP-21-F-6469, to attend the office work at Hyderabad. On 2.6.2004 at about 5.30am, some unknown vehicle came with high speed in rash and negligent manner and dashed Maruti car bearing No.AP 21F-6469. Ex.A2 is the certified copy of 161 Cr.P.C. statement of T. Thipanna (father of deceased Y. Nagaraj) wherein he also stated that the said eicher van is unknown vehicle. The settled law is that the statement recorded under 161 Cr.P.C can be used to contradict or corroborate the manner of it. It is not substantiate piece of evidence. 161 statement is inadmissible evidence because it does not contain the signature of the owner.

14. Further, Ex.A3 is the certified copy of post-mortem report and it cannot be relied for any purpose. Ex.A4 is the copy of inquest panchanama, dated:2.6.2004. In para No.XV also it is mentioned as unknown vehicle. Ex.A5 is the copy of the charge sheet, wherein the investigating officer-M. Shakir Hussain, Sub-Inspector of Police, Jedcherla police station, mentioned that, he visited the scene of offence and clearly found that, during the

course of investigation which is located on N.H.7 near Malleboinpalli stage, KM No.84/2 on N.H.7, he secured the presence of mediators ie., Y. Krishna and N. Mohan Prasad and conducted scene of offence panchanama. He seized a receipt which was found at the scene, written as Chinna Bapanaiah and sons, Manufacturers of Tarpalins etc., Vijaawada, vehicle No.AP26U/8674, for Rs.640/-. Basing on that and also opinion of M. Shakir Hussain, who found that the accident is not due to any mechanical defects of the crime vehicle and the accused driver surrendered before the Court on 19.6.2004 and released on bail.

15. Further, evidence also gathered and opined that on 2.6.2004 at 5.30 a.m., the accused driver bearing vehicle No.AP26U-8674 which was coming in opposite direction drove in rash and negligent manner and dashed the maruti car bearing No.AP21F-/6469, resulting the death of two persons on the spot. Against the finding in said charge sheet and also evidence of PWs.1 and 2, there is no rebuttal evidence produced by RW.1. The Tribunal having considered the consistence and un-impeachable evidence of PW2 supported by Ex.A5-charge sheet though in Exs.A1 and A4, it was mentioned as unknown vehicle because the driver of the unknown vehicle himself surrendered before the Court and that material covered by the Investigating Officer, the Tribunal came to right conclusion that the accident occurred due to rash and negligent

manner of the driver of Eicher Van bearing No.AP26U-8674. Such finding is legal and valid, can be sustained, do not suffer from legal infirmities warranting interference. Hence, such finding is sustained.

16. In the facts and circumstances discussed above, I am of the considered view that the accident was due to rash and negligent manner of the driver of Eicher Van bearing No.AP26U-8674 which was involved in the accident.

17. The further contention of the appellant/respondent No.2 is that on the date of accident, respondent No.4 is the owner and subsequently on 13.7.2004, the said vehicle was sold to respondent No.3 through Ex.B1, does not bind the Insurance Company to pay the compensation. Further, the evidence of PW.2 inspired confidence because he was present in the maruti car No.AP21F-6469 while going to Hyderabad in the same car and his presence cannot be doubted.

18. To substantiate the contention, the respondents 3 and 4 are the proper persons to speak about who is the owner and driver of the eicher van, at the time of accident. The respondent No.2 having taken such plea did not enter into the witness box and deposed the facts to its knowledge. The respondent No.2 having received notice, appeared through Counsel and filed counter simply marking Ex.B1-Insurance Policy with consent and did not

choose to enter into the witness box. Ex.B1-Insurance policy was issued in the name of respondent No.3 and the policy was in force with effect from 13.12.2003 to midnight 12.12.2004. Whereas, the accident occurred on 2.6.2004 at 5.30am. Therefore, undisputedly Ex.B1 policy with regard to Eicher van No.AP26U-8674 was in force and the insured is respondent No.3 whereas, the respondent No.2 is the insurer.

In the counter of the respondents, it is contended that it was brought to light that on the date of accident ie., on 2.6.2004, its owner was P. Doulat Khan, who sold it to respondent No.1 on a later date ie., on 13.7.2004. Respondent No.3 appeared through an Advocate and filed counter contending that he purchased the said Van on 13.2.2002, but it was under hire purchase from City Corporation Finance (India) Limited, Mumbai, through his office Sai Krishna Motors Limited, Nellore. Since he failed to pay due instalments in the month of October, 2003, the finance company seized the vehicle in the month of December, 2003 and 15 days later when he approached the said finance company offering to pay the due instalments, he was informed that the vehicle was sold away in auction and no signatures of him were obtained for the transfer of the vehicle, and his financiers have not settled his account, and therefore, he was not the owner of the vehicle on the date of accident.

19. To substantiate his contention, he was not entered into the witness box and deposed the evidence. Either auction proceedings or transfer certificate or R.C of the vehicle are not produced by the respondents to substantiate their contention. The insurance policy go along with the vehicle. It is not a case of the respondent No.2 that if really there was any transfer of the vehicle, it was not informed it. The respondent No.2 also failed to comply the mandatory provisions by issuing any notice either to the respondent No.1 or respondent No.3 calling upon them to furnish driving licence, R.C/permit of the vehicle and also particulars of the accident. Therefore, merely because vehicle was transferred, the insurance company does not absolve its liability as it was a vehicle which was insured with respondent No.2. Therefore, by virtue of Ex.B1-insurance policy, respondent No.2 has to indemnify liability of the owner of the vehicle eicher van bearing No.AP26U-8674.

20. The contention of the claimants is that the deceased was 21 years by the date of accident, he was a Commerce graduate having acquired degree in April, 2002 and Post Graduate diploma in computer training and used to earn Rs.3,400/- per month as audit clerk under A. Yuvaraj. To substantiate the same, there is an evidence of PW1 who deposed that deceased-Y. Nagaraj is his son who was 21 years and working as audit clerk in the company of A. Mahadev and his son represented by A. Yuvaraj, used to earn an

amount of Rs.3,400/- per month and further he was unmarried. Hence, used to contribute the entire amount for the family maintenance. Besides this evidence, Y. Nagaraj was a graduate and Post Graduate in Diploma in Computer Programming and having experience in computer side. To substantiate the same, he filed Ex.A6-P.G. Diploma in Computer Programming certificate. According to which, Y. Nagaraj has successfully completed one year diploma course of study and having been declared to have passed prescribed examination held in September, 2001. Ex.A7 is the certificate of experience issued by Real Point Computers. According to this certificate, Y. Nagaraj has experience as lab faculty from 01-4-2001 to 31-08-2001. Ex.A8 is the provisional passing certificate. According to which, the deceased Nagaraj has completed his degree of bachelor of Commerce. So, the evidence of PW1 is supported by Ex.A8 establish that the deceased Y. Nagaraju was a graduate in Commerce. He did Post Graduate diploma in computer programming and is having experience as lab faculty during the period from 01-4-2001 to 31-8-2001.

21. To substantiate the income, the claimants did not produce any salary certificate or examined any one concerned. The present company with which the deceased was working is a company run by A. Mahadev and his son A. Yuvaraj. According to the evidence of PW1, he was audit clerk under the company of A. Mahadev and his

son A. Yuvaraj. There is no rebuttal evidence to the evidence of PW.1. Admittedly, petitioners / claimants did not produce any age proof of the deceased Y. Nagaraj. He completed degree-Bachelor of Commerce by April, 2002. Normally, one will cross 16 years for completing SSC, two years for completing Intermediate and three years for graduation. So, he must be 22 years by April, 2002. The accident was occurred on 02-6-2004 at 5.30am. Therefore, by which date, as per the evidence of PW1, Y. Nagaraj 21 years and completed his graduate in Commerce. Since there is no documentary evidence, the Tribunal rightly took the income of the deceased as Rs.3,000/- per month. Since the deceased was unmarried, the Tribunal has taken the age of the mother who is the petitioner No.2 herein.

22. The Tribunal having considered that the deceased was unmarried, took the age of the mother. The Tribunal well discussed before assessing the age of the mother. In the award and decree, the mother is the claimant No.2 herein who did not enter into the witness box. PW.1 is the father of the deceased and husband of petitioner No.2 did not speak the age of his wife. During cross-examination, PW.1 admitted that he had two children and the deceased was the elder son. Thus, the deceased is the first son of PW.1. The age of the deceased as he was a graduate should have been easily proved by the petitioner with the certificates or atleast his 10th class marks certificate. Ex.A6 degree certificate does not

show/disclose the age of the deceased. However, shows that he completed degree by April, 2002. When we consider the academic pursuit of any person / child who at the age of 5 years join in the 1st standard, by the year 2002, if he has passed degree, he must be 20 years old by the year 2002. The accident shows that it occurred on 02.6.2004. The age of the deceased must be 22 years by the date of accident.

23. The Tribunal further discussed and found that if the deceased was 22 years, his mother (claimant No.2) would be 40 years by the date of accident. Since the petitioners have not shown age of the mother of deceased Y. Nagaraj by any semblance of proof for assessment of compensation, her age was fixed as 45 years for the purpose of deciding the Multiplier.

24. As already discussed above, the Tribunal having considered that the petitioner was a graduate and diploma in computer programming and was unmarried, assessed monthly income at Rs.3,000/- per month and the annual income arrived at Rs.36,000/- By invoking Schedule-II of Section 163-A of Motor Vehicles Act, considered the age of the claimant No.2 as 45 years and the age of the deceased as 22 years and by applying Multiplier-13 and by deducting 1/3rd towards personal expenditure of the deceased, arrived the compensation at Rs.3,12,000/-. Besides that, awarded

Rs.2,500/- towards loss of love and affection, Rs.2,500/- towards funeral expenses and Rs.1500/- towards dead body transport charges. In all, awarded an amount of Rs.3,18,000/-. Since the respondent No.3 is the owner of the Eicher van bearing No.AP-26U-8674, the accident had occurred due to rash and negligent driving of the driver employed by respondent No.3, therefore, respondent No.3 is liable to pay compensation. By virtue of Ex.B1-insurance policy, respondent No.2 is liable to pay compensation. The Tribunal dismissed the claim petition against respondent No.1. There is no appeal against the order passed by respondent No.1 or the claimants.

The Tribunal passed award for Rs.3,18,000/- against the respondents 2 and 3 jointly and severally liable to be paid by them which will be deposited within thirty days from the date of the order. Petition against respondent No.1 was dismissed without costs. Compensation amount was also apportioned by awarding Rs.2,00,000/- to the petitioner No.2 and permitted her to withdraw Rs.50,000/- and the rest of the amount was ordered to be kept in a fixed deposit in any nationalized bank for a period of two years. The petitioner No.1 being father awarded Rs.1,18,000/- and he was permitted to withdraw Rs.25,000/- and the rest of the amount shall be kept in a fixed deposit in any nationalized bank for a period of two years with interest at 7.5% per annum.

25. In view of the above discussion and finding therein, I find that the award passed by the Tribunal is valid and do not suffer from any legal infirmities warranting interference. In the result, the appeal is dismissed with costs, confirming the award and decree dated:15.7.2008 passed in M.V.O.P.No.89 of 2006, in toto. Further, the respondents 2 and 3 are directed to deposit the compensation amount after deducting the amount, if any, already paid, within a period of 30 days from the date of receipt of a copy of this judgment. On such deposit, the claimants/petitioners are permitted to withdraw the same.

26. Advocate fee is Rs.2,500/-.

27. Miscellaneous petition/s pending consideration, if any in the appeal shall stand closed in consequence.

JUSTICE N.BALAYOGI

Dated:30-01-2018

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THE HONOURABLE SRI JUSTICE N. BALAYOGI



M.A.C.M.A. No.2866 of 2009

DATED:30-1-2018

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