

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1489 of 2009

JUDGMENT :

The appellants aggrieved by the Award and Decree dated 22.2.2005 in O.P.No.594 of 2001 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Nizamabad, awarding compensation of Rs.4,14,000/- with subsequent interest at 9% per annum from the date of the petition till realization jointly and severally against respondents herein, preferred this appeal on the grounds that the Tribunal did not properly consider the evidence of P.Ws.1 to 3 that husband of the appellant No.1 succumbed to injuries caused in the accident involving lorry and that he used to earn Rs.1,20,000/- per annum by cultivation of lands and the Tribunal erred in assessing the income at Rs.3,000/- per month and awarded meagre amount.

2. It is further contended by appellants that the Tribunal ought to have taken into consideration Exs.A4 and A5 which are issued by competent authorities and further ought to have granted 12% interest instead of 9% which was prevailing as on the date of the accident.

3. The claim of appellants – claimants in brief is as follows :

On 18.1.2001 at about 12.15 AM the deceased T.Hanmanth was proceeding by walk on the road from Bheemgal

towards approach road to Morthad, in the meanwhile lorry bearing No.AP 25 T 3060, came from Bheemgal side, dashed the deceased, due to which, he fell down and front wheel of the lorry run over the deceased and he sustained crush injuries all over the body and died on the spot.

4. The deceased, who was 35 years old and an agriculturist, used to earn Rs.1,20,000/- per annum. The petitioners are dependents upon him. Due to sudden death, petitioners lost love and affection of the deceased.

5. The 1st respondent remained *ex parte*.

6. The 2nd respondent filed counter contending that there is no rash and negligence on the part of the lorry driver. The petitioners are not sole heirs of the deceased. The amount claimed is excessive. The vehicle had no valid permit.

7. Basing on the pleadings, the following issues were settled for trial :

1. Whether the accident was due to rash and negligent driving of the lorry bearing No.AP 25 T 3060 by its driver?
2. Whether the petitioner is entitled for compensation. If so, to what amount and against which of the respondent?
3. To what relief?

8. In support of claimants, contentions, P.Ws.1 to 3 were examined and Exs.A1 to A8 were got marked. On behalf of

respondents, no witnesses were examined and no documents were got marked.

9. Now the point that arises for determination is :

“Whether the Tribunal, having considered the oral and documentary evidence, awarded the reasonable compensation to claimants/appellants?”

10. Learned counsel for appellants contended that the evidence of P.Ws.1 to 3 established the rash and negligence of the driver of the offending vehicle and the deceased was an agriculturist and used to earn Rs.1,20,000/- per annum by cultivation of lands. Ex.A4 and Ex.A5 – Income Certificates are duly issued by the competent authorities.

11. On the other hand, respondent contended that the Tribunal, having considered both oral and documentary evidence, granted satisfactory compensation and there is nothing to interfere.

12. The case of petitioners is that on 18.1.2001 at 12.15 AM while the deceased Hanmanth was going by walk on the road, lorry bearing No.AP 25 T 3060 came with high speed in rash and negligent manner from Bheemgal side and dashed the deceased and the front wheel of the lorry run over the deceased and caused crush injuries resulting in death.

13. To substantiate their claim, the 1st petitioner, who is the wife of the deceased, was examined as P.W.1. She has reiterated the pleadings in the claim petition that at the time of accident her husband

was coming by the side of the road by walk and lorry bearing No.AP 25 T 3060 driven with high speed and rash and negligent manner dashed her husband and he succumbed to injuries. During cross-examination she admitted that she is not the eyewitness to the accident and she does not know the lorry which dashed her husband.

To substantiate the rash and negligence, the claimants examined Ch.Gangadhar, eyewitness to the accident, as P.W.2, whose evidence is that at 12.00 mid night about 2 ½ years back to the date of his giving evidence, the accident occurred, at that time, the deceased Hanmanth was coming towards Morthad from Bheemgal road, in the meanwhile, lorry bearing No.AP 25 T 3060 came behind in rash and negligent manner and dashed him. Hanmanth died on the spot. During cross-examination he admitted that after the accident the lorry was stopped there, therefore, there is every possibility for P.W.2 to identify the lorry number.

14. Ex.A1 is the F.I.R. wherein there is specific assertion that at about 12.15 in the mid night, complainant along with Gangadhar – P.W.2 and Hanmanth was proceeding towards panchayat office by the side of the road. In the meanwhile, lorry bearing No.AP 25 T 3060 came behind with high speed in rash and negligent manner and dashed Takuri Hanmanth, then P.W.2 and the complainant moved aside and Hanmanth succumbed to injuries. The inquestdars under Ex.A2 inquest report opined that the accident was due to rash and negligent driving of the lorry bearing No.AP 25 T 3060. In Ex.A7 – PME report,

the Doctor, who conducted post-mortem examination, opined that the death was due to shock and haemorrhage, as a result of multiple grievous injuries. In the charge-sheet – Ex.A8, the Investigating Officer opined that on 18.1.2001 at 12.15 AM the driver of the lorry bearing No.AP 25 T 3060 Abdul Shafi drove his lorry in rash and negligent manner and dashed Takuri Hanmanth and as a result, he succumbed to injuries on the spot.

15. In the facts and circumstances discussed above, I am of the considered view that the Tribunal in the absence of rebuttal evidence, rightly considered the oral evidence of P.W.2, who was cited as 5th witness in Ex.A8 – charge-sheet and examined as P.W.2 in the criminal case filed against the driver of the lorry and who is the eyewitness to the accident and whose evidence is corroborated with Ex.A1, A2, A7 and A8 well established that accident was due to rash and negligent driving of the offending vehicle bearing No.AP 25 T 3060 resulting in the death of Takuri Hanmanth.

16. With regard to age and income, absolutely there is no documentary evidence. The evidence of P.W.1 is that her husband was 35 years old as on the date of the accident. In Ex.A2 – inquest report and Ex.A7 – PME report, age of the deceased is noted as 36 years. Therefore, the Tribunal taking into consideration the age of the deceased as 36 as mentioned in Exs.A2 and A7, applied the multiplier '16'.

17. With regard to the income, the claim of petitioners is that Hanmanth used to earn Rs.1,20,000/- per annum by cultivation of land. Ex.A3 is the copy of pahani pathrika wherein it was shown that deceased was having 5-10 guntas of dry and patta land. In column-16 of Ex.A3 it was noted *padeethu* which means land is kept vacant for the year 1998-1999, whereas accident occurred on 18.1.2001. So, even prior to the accident during the year 1998-1999 the land was kept as vacant without any cultivation. Against column-21 of Ex.A3, the name of the crop raised is mentioned as *makka* and turmeric. The columns-16 and 21 of Ex.A3 are contradicting and inconsistent with each other. Even after the death of the deceased, the said lands are available to petitioners to raise crops. At most, they have lost supervision of the deceased, which does not yield loss of earnings. Ex.A4 is the income certificate dated 8.2.2001 issued by M.R.O., Morthad to the effect that the deceased was having Ac.6.20 guntas of land including lands covered by Ex.A3 pahani and annual income of the deceased was Rs.75,000/-. Again, M.R.O. issued another certificate – Ex.A5, dated 6.1.2003 showing that the deceased was earning Rs.1,20,000/- and both certificates Exs.A4 and A5 are issued by different M.R.Os. and they are also inconsistent with each other. P.W.1 was examined on 27.6.2003 and P.W.3 was examined on 11.7.2003. Ex.A5 – income certificate was obtained one month before examination of P.Ws.1 and 3. Exs.A4 and A5 are showing different incomes and they are inconsistent which could raise doubt and they are suspicious. Therefore, the Tribunal rightly found that no weight need be given to

Exs.A4 and A5 and that which were obtained one month prior to the evidence of P.Ws.1 and 3 which appears that they were obtained for getting more and more compensation without any basis. More so, P.W.3 deposed that there were two bore wells and the deceased used to raise paddy, sugarcane, turmeric, vegetables etc., and earn Rs.2,00,000/- per annum. There is no documentary evidence that there were two bore wells in the said land and that electricity connections were given to them. The evidence of P.Ws.1 and 3 is silent with regard to yield of agricultural produce and also rates of the commodities. In such circumstances, the Tribunal held that since the deceased was able bodied person, his earnings would not be less than Rs.3,000/- per month. Therefore, the Tribunal took the monthly income of the deceased at Rs.3,000/- per month and deducted 1/3rd towards the maintenance of the deceased. The claimants in this case are five in number, therefore, by applying the decision of the Apex court in *Sarla Verma v. DTC*¹ the deduction towards personal expenses should be 1/4th but not 1/3rd, which requires modification.

18. Besides that, the Tribunal awarded Rs.10,000/- towards loss of estate and Rs.5,000/- towards transportation and funeral expenses and Rs.15,000/- towards consortium to the first petitioner.

19. According to the latest constitutional bench judgment of the Apex court in *National Insurance Company Limited v. Pranay*

¹ (2009) 6 SCC 121

*Sethi and Others*² the claimants are entitled for loss of estate, loss of consortium and funeral expenses at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. It is also held that age of the deceased should be the basis for applying the multiplier. In the present case, the age of the deceased is 36, therefore, the relevant multiplier is '16'.

20. Accordingly, since the age of the deceased was 36 years, the relevant multiplier is '16'. The monthly income of the deceased was taken at Rs.3,000/- and the same is considered. If the monthly income of the deceased is taken as Rs.3,000/-, the annual income comes to Rs.36,000/-. After deducting 1/4th towards expenses of the deceased had he been alive, the dependency comes to Rs.27,000/- and if the same is multiplied by applying the multiplier '16', it comes to Rs.4,32,000/-. Besides that, the petitioners are entitled to Rs.5,000/- towards transportation of the dead body as awarded by the Tribunal and also in view of the Constitutional Bench Judgment, the claimants are entitled to Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses respectively. Accordingly, petitioners are entitled for a total compensation of Rs.5,07,000/-.

21. It was already held that the accident was occurred due to negligence on the part of driver of offending lorry bearing No.AP 25 T 3060 resulting in death of the deceased and the deceased is third party. Ex.A6 - copy of insurance policy discloses that the offending lorry

² 2017 (ACJ) 2700

bearing No.AP 25 T 3060 belonging to the 1st respondent was insured with 2nd respondent. 1st respondent did not participate in the proceedings and remained *ex parte*. Therefore, 1st respondent is vicariously responsible for the negligence committed by his employee during the course of employment.

22. As seen from Ex.A6 policy, the offending vehicle of 1st respondent was insured with the 2nd respondent and the policy was in force from 14.12.2000 to 13.12.2001. The accident occurred on 18.1.2001 and thus I am satisfied that as on the date of accident, the insurance policy was in force. Respondent No.2 did not prove any violation of policy by the respondent No.1. Hence, 2nd respondent has to indemnify the 1st respondent in payment of awarded compensation to the petitioners. Accordingly, respondents 1 and 2 are jointly and severally liable to pay the compensation of Rs.5,07,000/- to the claimants/appellants herein.

23. In the result, the appeal is partly allowed with proportionate costs while setting aside and modifying the award and decree dated 22.2.2005 in O.P.No.594 of 2001 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), at Nizamabad and passed the modified award for Rs.5,07,000/- against the respondents 1 and 2 jointly and severally with proportionate costs and interest at 9 % per annum, as awarded by the Tribunal, from the date of petition i.e., 5.2.2001 till the date of deposit or realization, which shall be deposited, after adjusting the amount, if any, already deposited or

paid, within a period of 30 days from the date of receipt of a copy of the appeal judgment.

24. The award is apportioned among the claimants awarding Rs.2,00,000/- to the 1st petitioner, Rs.67,000/- to the 2nd petitioner and Rs.80,000/- each to petitioners 3 to 5 with proportionate costs and interest.

25. On such deposit of the compensation, petitioners 1 and 2 are permitted to withdraw their apportioned amount. The amount awarded to petitioners 3 to 5 shall be kept in any nationalized bank till they attain majority and after attaining majority, according to their need and necessity, they shall seek permission to withdraw their share of amount by making application before the concerned Tribunal i.e., Chairman, Motor Accidents Claims Tribunal (I Additional District Judge), Nizamabad.

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

27. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

23rd January, 2018
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