

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.2350 of 2018

03.10.2018

Between:

United India Insurance Co., Ltd.,
represented by its Divisional Manager, Chittoor.

..Appellant

and

M.Sumathi and others

..Respondents

Counsel for the appellant: Mr.V.Sambasiva Rao

Counsel for the respondents: None appeared

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal filed by an insurance company arises out of award and decree, dated 26.02.2018, in M.V.O.P.No.107 of 2014 on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-III Additional District and Sessions Judge, Tirupati.

2. One M.Narasimhulu (hereinafter referred to as 'the deceased') - the sole breadwinner of the family of respondent Nos.1 to 4 lost his life on 28.09.2012 in a motor accident involving lorry bearing registration No.AP 26 U 9218 belonging to respondent No.5 and insured with the appellant. Respondent Nos.1 to 4, being the family members of the deceased, filed M.V.O.P.No.107 of 2014 under Section 166(1)(c) of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rules 455 and 475 of the Andhra Pradesh Motor Vehicles Rules, 1989 claiming a compensation of Rs.35,00,000/-.

3. The claimants pleaded that while the deceased was carefully driving his motorcycle on 28.09.2012 at about 9.00 p.m., on the left side of the road running from Yerpedu to Venkatagiri at Paramalapalli Village, the offending lorry being driven in a rash and negligent manner by its driver hit the deceased and the said driver ran away from the place of the accident. The Police

registered crime No.124 of 2012 for the rash and negligent driving on the part of the driver of the offending lorry. The claimants further pleaded that the deceased was 28 years of age and was working as Cashier in Nalli Silks, Begampet, Hyderabad and earning a salary of Rs.15,509/- per month. They also pleaded that the deceased would have earned Rs.40,000/- per month by the time of his retirement had he been alive. Respondent No.5 – the owner of the offending lorry, remained *ex parte* before the Tribunal. The appellant, however, contested the claim mainly on two grounds *viz.*, that there was contributory negligence on the part of the deceased and that the claim of compensation was excessive.

4. In support of their claim, claimant No.1 – the widow of the deceased, examined herself as P.W.1 apart from examining P.Ws.2 and 3. The claimants also got Exs.A-1 to A-10 marked. On behalf of the appellant, R.W.1 was examined and Ex.D-1 – the copy of the insurance policy was marked. On appreciation of the oral and documentary evidence, the Tribunal framed the following points for consideration.

“1. Whether the accident occurred due to rash and negligent driving of the driver of lorry bearing No.AP 26 U 9218 of 1st respondent on 28-9-2014 and whether

M.Narasimhulu died as a result of injuries sustained in the accident?

2. What was the age and income of the deceased as on the date of his death?

3. Whether the petitioners are entitled for compensation and if so, to what amount and from whom?

4. Whether the OP is bad for non joinder of necessary parties?

5. To what relief?

5. As regards point No.1, the claimants examined P.W.2 – the eyewitness to the accident, apart from getting Ex.A-1 – certified copy of F.I.R., marked. Except the *ipse dixit* of the appellant that the deceased contributed to the accident, no evidence was adduced by it in support of this plea. The Tribunal, based on the evidence of P.W.2 and Ex.A-1, has held and in our view rightly, that the accident occurred on account of the rash and negligent driving of the driver of the offending lorry insured with the appellant.

6. With respect to point No.2, the claimants examined P.W.3 – the Supervisor of the employer of the deceased, apart from getting Exs.A-7 to A-10 – salary/work certificates issued by the employer, marked. Having accepted the aforementioned evidence, the

Tribunal has taken the income of the deceased as Rs.15,509/- per month and following the decision of the Apex Court in **National Insurance Company Limited v. Pranay Sethi**¹, it added 40% to the said income as the deceased was admittedly below the age of 40 years. Accordingly, the Tribunal has assessed the total income of the deceased at Rs.2,60,551/- per annum and after deducting 1/3rd out of the same towards personal expenses, it has taken Rs.1,73,701/- for the purpose of calculating the loss of dependency. As the deceased was 29 years, the Tribunal has adopted the multiplier '17' following the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**² and assessed Rs.29,52,917/- (Rs.1,73,443 X 17) towards loss of dependency. The Tribunal has further awarded a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium. After adding up all these heads, the Tribunal has awarded a sum of Rs.30,23,000/- as compensation for the death of the deceased.

7. The learned counsel for the appellant has submitted that Exs.A-7 to A-10 were not proved. We are afraid, we cannot accept this submission as the appellant has not disputed the fact

¹ 2017 ACJ 2700 SC

² (2009) 6 SCC 121

that P.W.3 was an employee of the employer of the deceased and it has also not disputed the authenticity of the aforesaid documents. The learned counsel for the appellant has further argued that as per P.W.1's evidence, the driving licence of the deceased was not produced. In our opinion, when the claimants were able to prove that the accident occurred solely on account of the rash and negligent driving of the driver of the offending lorry, non production of the driving licence of the deceased is wholly irrelevant.

8. In the light of the above discussion, we are of the opinion that the award passed by the Tribunal is just and reasonable and therefore, we do not find any reason to interfere with the same.

9. The appeal is, accordingly, dismissed.

10. As a sequel to dismissal of the appeal, I.A.No.1 of 2018 filed by the appellant for interim stay stands dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

03rd October, 2018

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