

THE HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.2250 of 2009

JUDGMENT:

The appellants/claimants, aggrieved by the award and decree dated:04.02.2008 in M.V.O.P.No.1101 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur, (for short, Tribunal), preferred this appeal, in awarding a sum of Rs.1,60,000/- with interest at 7.5% per annum from the date of the petition till the date of dismissal (28-12-2001) and from the date of its restoration (12-09-2007) till the date of deposit or realization whichever is earlier.

2. The contention of the claimants is that, awarding an amount of Rs.8,000/- instead of Rs.15,000/- towards loss of estate, and also awarding Rs.1,60,000/- instead of claimed amount of Rs.2,00,000/- and further contended that the Tribunal ought to have granted interest at the rate of 9 % instead of 7.5% from the date of petition per annum from the date of the petition till the date of dismissal (28-12-2001) and from the date of its restoration (12-09-2007) till the date of deposit or realization whichever is earlier, is contrary to law and further should have taken the income of the deceased as Rs.3,000/- per month and the Tribunal has taken income of the deceased as Rs.15,000/- only per annum which is contrary to law, weight and probabilities of the case.

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

4. The claim of the appellants / claimants in brief are as under:

On 25.7.2001 at about 6.00p.m., while the deceased (Shaik Hussenbee) was crossing the G.T road, the auto bearing No.AP-20U-

1498 came from the side of old bus stand side proceeding towards old Guntur at high speed in rash and negligent manner and hit against the deceased. As a result, she sustained multiple fracture injuries and she was shifted to Government General Hospital, Guntur for treatment. While taking treatment, she died in the hospital.

The deceased was 44 years at the time of accident and was earning an amount of Rs.3,000/- per month by doing fruits vending business. She used to spend entire amount to the petitioners. All the petitioners were depending on the earnings of the deceased. Petitioners also lost their dependency due to untimely death of the deceased. The marriage of the 3rd petitioner became difficult as their mother died prematurely.

5. The 1st respondent remained exparte. The 2nd respondent filed counter contending that liability arises only on proof of valid insurance policy for the auto bearing No.AP-20U-1498. Further, to pay compensation if any, is subject to proof of any valid driving licence possessed by the driver of the auto and valid permit to the vehicle to ply on the road. The 2nd respondent further contended that the accident occurred due to the negligence of the deceased Shaik Hussienbee when she was crossing the road unmindfully. The amount of compensation claimed by the petitioner is excessive.

6. Basing on the rival contentions and on hearing the parties, the Tribunal settled the following issues for trial:

- (1). *Whether the accident took place due to negligent driving of the driver of the auto bearing No.AP-20U-1498?*
- (2). *Whether the petitioners are entitled for the compensation, if so, what amount and from which of the respondents?*
- (3). *To what relief?*

7. On behalf of claimants, PWs1 to 3 were examined and marked Exs.A1 to A5. On behalf of respondents, RWs1 and 2 were examined and marked Exs.B1 to B4.

8. Now, the point that arose for determination is.

Whether the Tribunal erred in awarding compensation on different heads and also awarding interest from the date of petition till the date of dismissal and also again from the date of restoration till the date of date of deposit or realization?

9. The contention of the appellants / claimants is that the Tribunal did not follow the law in awarding the compensation and also in assessing the income of the deceased and also in awarding interest.

10. On the other hand, the respondents contended that the Tribunal rightly awarded interest and also considered the income of the deceased as Rs.15,000/- per annum since there is no evidence on record to prove the income produced by the claimants. The award of the Tribunal is legally valid, does not warrant interference by this Court in this appeal.

11. Since the appeal is filed by the claimants/appellants and they have been disputing the finding regarding the rash and negligent driving of the auto driver bearing No.AP-20U-1498 and also the death of Shaik Hussenbee. Shaik Allabakshu, S/o Chand Saheb (2nd petitioner) is examined as PW.1 whose evidence is that on 25.7.2001 at about 6.00pm, while the deceased and her sister coming from Chinakondrupadu and after getting down from the bus at RTC bus stand and while they were going on walk to Brodiepet, Guntur, where her son was taking training in an electronic shop and at that time, auto bearing No.AP-20U-1498 proceeding from old bus stand towards old

Guntur at high speed in rash and negligent manner and hit against the deceased while she was crossing the G.T. road, Guntur, situated opposite to NTR statue. Through the cross-examination, admits that he is an eye witness to the accident. Therefore, his evidence is of no use to decide the manner in which the accident occurred and involvement of the auto.

Therefore, necessarily, we have to rely on the evidence of PW.2, who spoke that on the date of accident herself and the deceased (Shaik Hussenbee) were proceeding from bus stand, in order to board an auto. After crossing NTR statue, one auto came in their opposite direction driven by its driver with high speed in rash and negligent manner and dashed against Shaik Hussenbee. She sustained injuries to her leg and head in that accident. Thereafter, she was shifted to Government General Hospital, Guntur, in the same auto. Doctor declared her as dead in the hospital. PW.2 was cross-examined at length and she admits that Shaik Hussenbee is her elder sister and further admits that the accident occurred while they were crossing road and that there was negligence on the part of the driver of the auto in occurrence of the accident.

12. RW.1 is working as assistant in the third party claims department in the 2nd respondent Company. He only speaks that the auto bearing No.AP-20U-1498 is insured with the 2nd respondent for the period from 15.9.2000 to 14.9.2001. He is not an eye witness to the accident. Similarly, RW.2 is working as Junior Assistant in the Office of Deputy Transport Commissioner, Guntur. He speaks that Ex.B3 is the authorisation given by Deputy Transport Commissioner in his favour. Ex.B4 is the driving licence extract relating to one L.Chitti Babu. As per Ex.B4, the said Chitti Babu possessed L.M.V. (transport) vehicle. He has no licence to drive the

auto. Ex.B4-driving licence extract, this evidence is also not useful to decide the rash and negligence.

13. Now, coming to the documentary evidence, Ex.A1 is the copy of the FIR submitted by Shaik Shakur Bee, W/o Mahaboob Baig and Ex.A2 is the charge sheet. On reading of Exs.A1 and A2 together go to suggest that PW2 is sister of deceased and in the said Ex.A2, PWs.1 and 2 alleges and after thorough investigation, the Investigating Officer filed Ex.A2-charge sheet. The finding is that on 25.7.2001 evening, PW.2 and the deceased came to Guntur to see Shaik Allabaksh-PW.1 and they alighted at RTC bus station, Guntur and were walking towards Kodiguddu Satram to engage an auto. On the way when they reached near NTR statue, they tried to cross the road from east to west. At the that time, at 6.00pm, the auto driver bearing No.AP-20U-1498 which was proceeding from Kodiguddu satram towards old Guntur at high speed in rash and negligent manner dashed against the deceased and run over on her left leg resulting sustained injury to her head and leg was fractured.

The Investigation Officer under Ex.A4 also opined that while PW2 and deceased were crossing the road, the driver of the auto bearing No.AP-20U-1498 came in rash and negligent manner and dashed the deceased. As a result, she sustained injuries and while undergoing treatment in Government General Hospital, Guntur, she died. The Motor Vehicles Inspector under Ex.A5, conducted test and opined that vehicle was taken road test and found foot brakes is in good condition. The accident was not due to any mechanical defects of the vehicle. The Tribunal having considered the oral evidence of PW1 and documentary evidence under Exs.A1, A2, A4 and A5 and also the evidence of RWs1 and 2 came to right conclusion that RW.1 is working as an assistant in 2nd respondent Company and he was not an eye witness to the accident and he do not know how the accident

occurred. Similarly, RW.2 is Junior Assistant in the Office of Deputy Transport Commissioner, Guntur and spoke about it.

The respondents have taken plea that the driver of the auto has no licence to drive the auto and deceased herself is also responsible for the accident under the oral and documentary evidence. When the petitioners produced evidence of PWs.1 and 2, to substantiate the contention, the respondents did not choose to examine the driver of the auto bearing No.AP-20U-1498 who is responsible for the accident. If there was no negligence on the part of the driver of the auto, nothing prevented them to examine the auto driver. The 2nd respondent did not come forward with any explanation for cross-examining driver of the auto who is responsible for the accident. In the absence of any rebuttal evidence produced by the 2nd respondent with regard to rash and negligent driving and the manner of accident occurred, the evidence of PWs.1 and 2 corroborated the documentary evidence of Exs.A1, A2, A4 and A5 well established that the accident was due to rash and negligent driving of the auto driver bearing No.AP-20U-1498. Such finding is legally valid and do not suffer legal infirmities warranting interference.

14. The further contention of the appellants is that the Tribunal ought to have assessed the income of the deceased as Rs.3,000/- per month but not Rs.15,000/- per annum. For this, there is evidence of PW.1 who stated that the deceased was aged 44 years prior to the accident. She was doing fruits business and cultivation and earning Rs.3,000/- per month and she used to spend the same for her family maintenance. She was hale and healthy at the time of accident and she used to spend her entire income for her family maintenance and the appellants/claimants are all dependents of the deceased. Except the claimants, there are no other legal representatives of the deceased. PW.1 was cross-examined at length with regard to age and

income of the deceased. The only suggestion is that the deceased was not earning any amount and that himself and his sister are dependents only on the earnings of the deceased. Except the income of deceased, there is no other source of income to lead their lives. There is no rebuttal evidence to the evidence of PW.1 with regard to the earning capacity of the deceased Shaik Hussenbee. In Ex.A1-FIR as well as Ex.A2-charge sheet, the occupation of the deceased was mentioned as fruit vendor in their village in Chinnakondrapadu. It corroborated with the evidence of PW.1. For an agricultural labour, there should not be any record showing the income.

Thus, it is clear from the Tribunal's decision that no material was placed before the Tribunal to prove as to what was the income of the deceased at the time of accident. Claimants also have not produced any certificate in proof of income. While assessing income, attendant circumstances have to be considered. In the light of what has been discussed about just compensation, the income cannot be estimated without any material.

To justify the estimation, the Honourable Supreme Court, in the case of State of Haryana and another V. Jasbir Kaur and Others¹ held as under”

“Learned counsel for the appellants submitted that with practically no evidence the Tribunal and the High Court proceeded to award Rs.6.5 lakhs. There was not even an iota of evidence to substantiate the claim of agricultural income from about 4 acres of land and there was no evidence that the deceased was having any income from sale of milk or cattle. The High Court having accepted that there was no material to show that the deceased had any income from sale of cattle or milk came to an abrupt and presumptuous conclusion that monthly income was Rs.4500/-. There was no material to show as to what was the type of land, annual yield, if any, and therefore, the award is not sustainable in law, and the High Court erred in dismissing the appeal. Per contra, learned counsel for the claimants submitted that the High Court has gone by the probabilities and the realities of life. Even if it is accepted that there was no material to show the income from the agricultural or dairy, a rational view can be taken about the possible income from the agricultural land, which the Tribunal did and the High Court give its seal of approval.

¹ (2003) 7 SUPREME COURT CASES 484

Gauzing the relevant aspects, noted above, the monthly income is fixed at Rs.3000/- per month, and after deducting Rs.1,000/- for personal expenses, financial contribution so far as the claimants are concerned is fixed at Rs.2,000/- per month."

As a result of the above judgement of the Supreme Court, the monthly income of PW1 is fixed at Rs.3000/- per month. But the Tribunal erred in saying that the claimants failed to produce any material to substantiate that the deceased was fruit vendor and was earning Rs.3,000/- per month. As already discussed, there is no record for fruit vendor or labourer.

15. Even though there is no rebuttal evidence, the Tribunal erroneously took the income of the deceased as Rs.15,000/- per annum. In the facts and circumstances discussed above, I find that the monthly income of the deceased who is 44 years admittedly is not less than Rs.3,000/- per month. Even an house wife's income is considered in between Rs.3,000/- to Rs.4,500/-. Therefore, as per the settled law, in the decision cited supra, I consider the income of the deceased as Rs.3,000/-.

16. The further contention of the respondents is that the driver has no valid licence, at the time of accident and hence, they are not liable to pay any compensation. RW.1 is the assistant working in the 2nd respondent – Company and his evidence is that the 2nd respondent got verified the driving licence of the accused driver and found that the driver was holding driving licence to drive light motor vehicle only as per the endorsement of the Additional Licensing Authority, Guntur under DL.No.4579/97 issued on 16.9.1997. Thus, the driver of the auto should have endorsement of the Additional Licensing Authority. Specifically, in this case, the driver of the auto had no such

endorsement and hence, he is not entitled to drive the auto rashly. In the absence of valid licence, the driver of the auto violated the terms of Ex.B1-Policy.

17. To substantiate that the driver did not possess valid licence, 2nd respondent also summoned and examined Junior Assistant of the Deputy Transport Commissioner, Guntur, who was authorised by the Deputy Transport Commissioner under Ex.B3 to attend before I Additional District Court, Guntur with regard to driving licence particulars. Driving licence No.4579/DL/G/1997. He also produced Ex.B4 – driving licence of L. Chitti Babu. As per Ex.B4, the driver of the auto possessed light motor vehicle, non-transport issued on 08.6.2001 and valid upto 15.9.2017 and transport driving licence issued on 11.4.2005 and valid upto 10.4.2008. During the cross-examination, RW.2 stated that there are eight categories of driving licence at present. Any vehicle of which un-laden weight is less than 7,500 kgs., will be called light motor vehicle and also admits that after issuing L.M.V. licence, it will be additionally mentioned the said person can drive auto rickshaw. It is true that auto will come within the purview of light motor vehicle as its un-laden weight is less than 7,500 kgs. The said Chitti Babu possessed transport licence with effect from 8.6.2001 onwards.

In the instant case, the accident occurred on 25.7.2001. Thus, as on the date of accident ie., 25.7.2001 at 6.00pm, he is in possession of transport driving licence. Auto is admittedly with the load of less than 7,500kgs within the purview of light motor vehicle. RW.1 also clearly admitted that the auto will come within the purview of light motor vehicle. Hence, objection taken by the learned Counsel is not tenable. Such a finding is based on the evidence of RW. 2 and admission by RW.1 and further supported by documentary evidence

under Exs.B2 and B4. Therefore, such a finding is legal, valid and do not call for any interference.

18. The further contention of the 2nd respondent is that the petitioners are majors and also they are not dependents on the income of the mother. Admittedly, petitioners 2 and 3 are children of the Shaik Hussenbee. 3rd petitioner is unmarried daughter of the deceased and the marriage prospectus of 3rd petitioner must have been affected due to sudden demise of her mother. 3rd petitioner has lost love and affection of her mother. Though the PW.1 in the evidence deposed stated that he was doing TV mechanic work in Chinakondrupadu village and 3rd petitioner got married and Shaim Hussenbee is their mother. That, though petitioners 2 and 3 were married, PW.1 simply doing TV mechanic work in Chinakondrupadu village. Admittedly, legal heirs are entitled for share of their mother.

19. Admittedly, the auto bearing No.AP-20U-1498 is insured with the 2nd respondent for the period from 15.9.2000 to 14.9.2001. Whereas, the accident occurred on 25.7.2001 by which date policy was in force by virtue of Ex.B1 policy. Respondent No.2 has to indemnify the liability of the 1st respondent. PW.1 evidence is that the deceased was 44 years by the date of accident and also at the time of death. The doctors under Ex.A3-postmortem report certified that the deceased died due to multiple injuries. Under Ex.A2-charge sheet, Ex.A3-postmortem report and Ex.A4-inquest report, the age of the deceased is noticed as 44 years. The Tribunal having considered the evidence of PW.1 and also documentary evidence under Exs.A2, A3 and A4 came to right conclusion that she was 44 years by the date of accident. As per the decision of the Apex Court in *Sarala Varma vs.*

*Delhi Transport Corporation*², the appropriate multiplier applicable for the age of 41 to 45 is '15'.

20. While pending the O.P before the Tribunal, the husband of the deceased(Shaik Hussenbee) died and the petitioners-claimants 2 and 3 remained herein.

21. Thus, in view of the facts and circumstances discussed above, I am of the considered view the accident occurred due to rash and negligent driving of the auto driver bearing No.AP-20U-1498 and the doctors certified that Shaik Hussenbee died due to multiple injuries in the accident. The Tribunal rightly came to conclusion basing on the evidence of PW.1 and also documentary evidence under Exs.A2, A3 and A4 that the deceased was 44 years by the date of accident. But it erred in considering the income of the deceased basing on Motor Vehicles Act under Second schedule. As per the settled law, even an house wife's income is considered in between Rs.3,000/- to Rs.4,500/- Therefore, as per the settled law, in the decision cited supra, I consider the income of the deceased as Rs.3,000/- per month and Rs.36,000/- per annum. Since the claimants on the date of claim petition are three in number, according to the Sarla Varma's Case, the 1/3rd income has to be deducted towards maintenance of the deceased, had she been alive. After deducting 1/3rd from Rs.36,000/-, it comes to Rs.24,000/- per annum. Thus, by applying Multiplier-14 ie., Rs.24,000/- x 14= 3,36,000/-. Apart from that, petitioners 2 and 3 who are son and daughter of the deceased are also entitled to Rs.15,000/- towards loss of estate and another Rs.15,000/- towards future expenses as per the decision in National Insurance Company

² (2009 ACJ 1298)

Limited v. Pranay Sethi and Others³ and no amount is awarded towards consortium because husband of the deceased is no more.

22. As seen from the record, received from the Tribunal docket order dated:26-11-2001 shows that the notice of respondent No.1 affixed to the door registered notice on respondent No.1 served notice. Notice of R.P on respondent No.2 served. Respondent No.1 and 2 called absent. Service against respondents 1 and 2 are sufficient and respondents 1 and 2 are set-exparte on 26-11-2001. Thereafter, O.P was posted for evidence of the claimants on 28.12.2001. On that date, petitioners called absent and petition was dismissed for default. No order as to costs. So, the claim petition was dismissed for non – prosecution of the claimants on 28-12-2001. Again petitioners filed I.A.No.376/2003 and I.A.No.378/2003 for restoration of the O.P and the same were allowed on 12.9.2007 and MVOP was restored to file and posted for petitioners evidence on 17-09-2007. Thereafter, on 17.9.2007, 2nd respondent filed a petition in IA.No.1671/2007 which was allowed on 17.9.2007. Written statement of 2nd respondent was filed and for issues, posted to 24.9.2007.

23. The above facts clearly go to suggest that respondents 1 and 2 were set exparte on 26.11.2001 and the main O.P was posted for petitioners exparte evidence on 28.12.2001 on which date, petitioners called absent and dismissed for default ie., for non-prosecution by the claimants. Thus, again it was restored to file as per orders in IA.Nos.376/2003 and IA.378/2003, dated:12.9.2007 which are filed by the claimants. In such circumstances, the Tribunal is legally valid in rejecting interest for the period from 28.12.2001 to 12.9.2007 on

³ 2017 (13) SCALE 12 = MANU/SC/1366/2017

which date M.V.O.P. was restored to file after dismissal on 28.12.2001 for default of the claimants itself. This order does not warrant any interference.

24. Thus, in all, the appellants/claimants are entitled to receive the total compensation of Rs.3,36,000/- + 15,000/-(towards loss of estate) + 15,000/- (towards future expenses) which comes to Rs.3,66,000/-.

25. In the result, the appeal is partly allowed with proportionate costs by modifying the award and decree dated:04.02.2008 in M.V.O.P.No.1101 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur, to the extent indicated hereinabove. Consequently, the 2nd respondent-Insurance Company is directed to deposit the total compensation of Rs.3,66,000/- together with subsequent interest at 7.5% per annum, after deducting the amount, if any, already paid, within a period of thirty days from the date of receipt of a copy of this judgment.

26. On such deposit, the petitioners 2 and 3 are permitted to withdraw the same, equally.

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

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

JUSTICE N.BALAYOGI

Dated:25-01-2018

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THE HONOURABLE SRI JUSTICE N. BALAYOGI



M.A.C.M.A. No.2250 of 2009

DATED:25-01-2018

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