

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.571 OF 2011

JUDGMENT:

Appellant-Insurance Company filed this appeal against the award and decree dated 17.08.2007 passed in M.V.O.P.No.413 of 2006 by the Chairman, Motor Accidents Claims' Tribunal-cum-V Additional District Judge, FTC, Anantapur, granting compensation of Rs.1,50,000/- as against the claim of Rs.1,50,000/-, for the death of the deceased-M.Lachhiram Naik.

The respondents-claimants filed claim petition under Section 166 of Motor Vehicles Act alleging that on 16.07.2006 while the deceased and his son-2nd claimant were proceeding in an auto bearing No.AP-02-U-5956 in order to go to their village, when they reached near Krishna Garden at about 3-00 p.m., another auto bearing No.AP-02-U-3282 driven by its driver in a rash and negligent manner, came behind and dashed the auto in which the deceased was travelling, due to which, the auto bearing No.AP-02-U-5956 fell on the road side ditch and the deceased received grievous injuries. Immediately, he was shifted to Government Hospital, Kadiri, where he was declared as 'dead' by the Doctor. Deceased was aged about 55 years, hale and healthy at the time of accident, used to earn Rs.6,000/- per month by doing agriculture and also attending coolie work.

The respondent-owner of the offending vehicle remained *ex parte*.

Insurance Company filed counter mainly stating that the accident was occurred due to rash and negligent driving of the driver of the auto bearing No.AP-02-U-5956 in which the deceased

was travelling and there is no rash and negligent driving on the part of the driver of the auto bearing No.AP-02-U-3282. The age and avocation of the deceased were also denied. It is also stated that the claim made by the claimants was highly excessive.

Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred on 16-07-2006 due to rash and negligent driving of the driver of the auto bearing No.AP-02-U-3282 dashed against the auto in which Lachhiram Naik was travelling and caused death to him?
- 2) Whether the driver of the crime vehicle had valid driving licence, fitness certificate, permit and R.C at the time of accident or not?
- 3) Whether the petitioners are entitled to compensation, if so, to what amount and from which respondent?
- 4) To what relief?

On behalf of the claimants, PW-1 was examined and Exs.A.1 to A.3 were got marked. R.W.1 was examined on behalf of the Insurance Company and Ex.B.1 was got marked. The Tribunal based on the evidence of P.W.1 and Exs.A.1 to A.3 came to the conclusion that the accident was occurred due to rash and negligent driving with high speed of the auto bearing No.AP-02-U-3282 by its driver. The evidence of R.W.1 was disbelieved by the Tribunal as there was no evidence in support of his plea that there was rash and negligent driving of auto bearing No.AP-02-U-5956 by its driver and the said auto was over crowded with passengers and over-loaded with cement bags, due to which the driver of auto bearing No.AP-02-U-5956 lost control over the auto, the auto turned turtle and fell on the road side ditch. The Tribunal also held that no eye witness was examined to support the evidence of R.W.-1. The plea of the appellant was that as there was

contributory negligence on the part of the driver of auto bearing No.AP-02-U-5956, its owner and insurer are also necessary parties but they were not made as parties and the appellant is not liable to pay any compensation when the contributory negligence is not proved. The Tribunal having believed the evidence of P.W.1, who was travelling along with deceased, came to the conclusion that the evidence available on record would show that the driver of the offending auto bearing No.AP-02-U-3282 is responsible for the accident. Therefore, the owner and insurer of the auto bearing No.AP-02-U-5956 are not necessary parties to the claim.

The Tribunal has taken the monthly income of the deceased as Rs.1,800/- and after deducting 1/3rd therefrom towards personal expenses, monthly income of the deceased was calculated as Rs.1200/- and arrived the annual income of the deceased at Rs.14,400/-. As the petitioner was aged about 55 years at the time of accident, the Tribunal has adopted the multiplier of '10' and arrived the loss of dependency at Rs.1,44,000/-. That apart, the Tribunal has granted Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate. This Court found that the Tribunal has awarded very less amounts under conventional heads and the claimants are entitled for higher amounts under conventional head in view of the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd., vs. Pranay Sethi**¹. Further, the Tribunal has taken a very meagre amount of Rs.1,800/- per month towards income of the deceased. However, since the present appeal is filed by the Insurance Company and in the absence of any Cross Appeal by the

¹ 2017 (6) ALD 170 (SC)

claimants, this Court cannot enhance the compensation amount. This Court having considered the contentions of the learned counsel for the appellant-Insurance Company and perused the award and decree passed by the Tribunal, found that there is no illegality or irregularity in the award passed by the Tribunal, which calls for interference of this Court.

For the reasons stated above, the appeal is dismissed. The appellant-Insurance Company shall deposit the remaining compensation amount, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents-claimants are entitled to withdraw their respective share amounts, as ordered by the Tribunal.

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

20.09.2018
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(M.GANGA RAO, J)

