

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

%08.02.2018

MA.CMA.NO.297 OF 2006

THE ORIENTAL INSURANCE COMPANY
LTD., REP. BY ITS SENIOR DIVISIONAL MANGER,
HYDERABAD.

APPELLANT

AND

SMT. DEVLII AND 6 OTHERS.

RESPONDENTS

Counsel for the appellant: SRI MANDADA SRINIVASA RAO

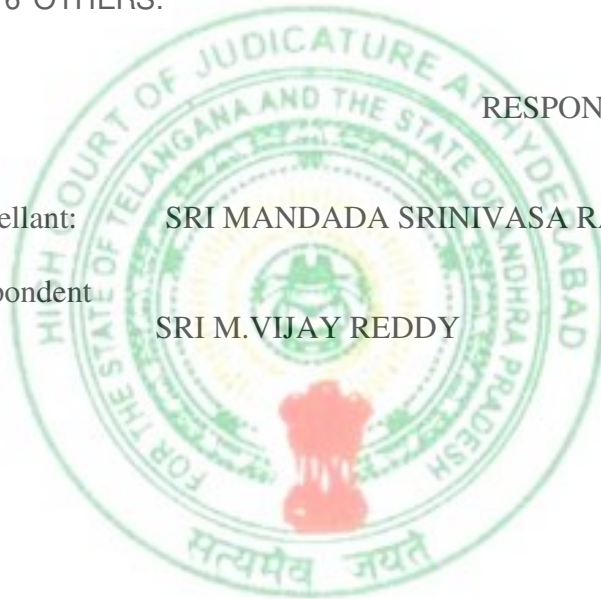
Counsel for the respondent
1 to 6: SRI M.VIJAY REDDY

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?Cases Referred:

1. AIR 2005 SC 2985
2. MANU SC 7680 2008



THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.297 OF 2006

JUDGMENT

The Oriental Insurance Company Limited, filed the present appeal aggrieved by the order and decree dated 28-07-2005 passed by the court of II Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.1042 of 2003, questioning the liability and the quantum of compensation.

The respondents 1 to 6 are the legal heirs of the deceased, who died in the motor accident that occurred on 28.03.2003 at 5.00 a.m.

In the claim petition it is stated that on 28.03.2003 at 5.00 a.m., when the deceased V.Badhya, was proceeding on his cycle from Hyderabad side towards Jadcherla from the extreme left side of the road and that when he reached Rajapur village, one mount rig lorry bearing No. AP 28R 4678, was also proceeding in the same direction. The driver of the said lorry drove his vehicle at a high speed, in a rash and negligent manner and dashed the cycle of the deceased, from behind. Due the impact, the deceased fell down on the road and received grievous injuries. The deceased died on the spot. Police of Balanagar Police Station registered case in Crime No.50 of 2003 under Section 304-A IPC against the driver of the crime lorry.

It is further stated that the deceased was working as civil mason and used to earn more than Rs.4,500/- per month. The deceased was the only earning member of his family consisting of the claimants. The claimants were totally dependant upon the earnings of the deceased for their livelihood,

as the deceased did not leave behind any immovable property. The 7th respondent herein is the owner of the crime lorry and the appellant herein is the insurer. With these averments, the claimants filed claim petition under Section 166 of Motor Vehicles Act, 1988 claiming an amount of Rs.4,00,000/-.

The owner of the vehicle remained ex parte. The insurer filed counter affidavit and while denying the averments made in the claim petition, sought for its dismissal.

Based on the above averments, the Tribunal framed the following issues for trial:

1. Whether the accident took place on 28.03.2003 at about 5.00 a.m. due to rash and negligent driving of lorry bearing No. AP 28R 4678, by its driver?
2. Whether the petitioners are entitled to claim compensation from the respondents? If so, to what amount and from whom?
3. To what relief?

In support of the case of the claimants, P.Ws.1 and 2 were examined and Exs.A-1 to A-7 were got marked. On behalf of insurer, R.W.1 was examined and Exs.B-1 to B-5 were marked.

Considering the case in Cr.No.50 of 2003 registered against the driver of the crime vehicle and the evidence of eye witness P.W.2, the Tribunal found that the accident occurred due to rash and negligent driving of the driver of the crime vehicle. The Tribunal, considering Ex.B-1 cover note of policy bearing No.5049 of 2003, held that the policy was in force as on the date of the accident. Considering the evidence on record, the Tribunal found that the deceased was a casual labour, earning an amount of Rs.75/- per day

and eventually after deducting 1/3rd towards personal expenses, arrived at the annual income of the deceased at Rs.18,000/-. Based on Ex.A-4 post mortem certificate, the Tribunal, taking the age of the deceased as 35, applied the multiplier of 17 and granted an amount of Rs.3,06,000/- towards loss of earnings of the deceased. The Tribunal also awarded Rs.15,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses. Thus, in all, the Tribunal awarded an amount of Rs.3,23,000/-, with interest at the rate of 9 per cent per annum. The Tribunal also issued directions with regard to manner of apportionment and mode of payment. Assailing the same, the insurance company filed the present appeal.

The learned counsel for the appellant – insurer submits that as per records of the insurance company, the policy bearing No.5049 of 2003 of the crime lorry, was valid from 12.11.2001 to 11.11.2002 and thereafter there was no renewal. Therefore, as on the date of the accident, the policy expired. R.W.1, who is the authorized officer of the insurance company, deposed to this fact. The claimants failed to produce copy of the policy to show that it was in subsistence as on the date of the accident. In the absence of policy, the insurance company cannot be made liable to pay compensation. He further submits that the deceased was aged 35 years. As per judgment of the Apex Court in *SARLA VERMA v. DELHI TRANSPORT CORPORATION*¹, for the age of 35 years, the appropriate multiplier is 16, but the Tribunal applied the multiplier of 17 and the hence same requires to be reduced. He would further submit that the Apex Court has been consistently awarding interest on the compensation amounts at the rate of

¹ (2009)6 SCC 121

7.5 per annum, but the Tribunal below awarded 9 per cent interest and the same is excessive. With these averments, he sought to set aside the impugned order.

On the other hand, the learned counsel for the respondents – claimants submits that under Ex.B-1 cover note, the Divisional Officer, Kurnool was required to produce the copy of the policy, but he failed to furnish the same and replied under Ex.B-2 stating that the policy has expired as on the date of the accident. The claimants are illiterates and the policy is with the owner of the crime lorry and he failed to furnish, and remained ex parte. However, the claimants furnished the particulars of the policy in the claim petition, stating that the said policy bearing No.5049/03, was valid from 14.11.2002 to 13.11.2003. As the accident occurred on 28.03.2003, it is clear that the policy was in subsistence as on the date of the accident. He further submits that in Ex.A-5 Motor Vehicle Inspector Report also it is mentioned that the policy No.5049/03 is valid from 14.11.2002 to 13.11.2003. As the insurer failed to produce the copy of the policy, and as per Ex.B-1 cover note, there is valid coverage of insurance policy on the date of accident, the Tribunal has categorically recorded a finding of fact that there is valid coverage of insurance policy on the date of the accident. He submits that the claimants are six in number. Therefore, as per SARLA VERMA v. DELHI TRANSPORT CORPORATION (1 supra), the deduction of personal expenditure of the deceased, shall be at the rate of 1/4th, but the Tribunal deducted 1/3rd from the assessed income of the deceased. If deduction is made at 1/4th, the claimants would be entitled to more

compensation. He stated that as per judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI*² the claimant are entitled for Rs.70,000/- under conventional heads viz., loss of estate, loss of consortium and funeral expenses. But in the present case, the Tribunal awarded only an amount of Rs.17,000/- towards loss of consortium and funeral expenses. With these submissions, the learned counsel sought to dismiss the appeal.

The owner of the crime lorry remained ex parte before the Tribunal and present appeal against him was dismissed for default. However, dismissal of the appeal for default against the owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in *MEKA CHAKRA RAO v. YELUBANDI BABU RAO & REDDEMMA*³, wherein it is held as under:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

As already noted above, the Tribunal appreciating the evidence on record, categorically recorded finding of fact that the accident occurred due to rash and negligent driving of the crime vehicle.

² 2017(13) SCALE 12

³ 2001(1) ALT 495 (DB)

The insurance company, is mainly disputing its liability on the ground that the policy of the crime lorry, was not in force as on the date of the accident.

In order to consider this issue, it is necessary to consider the averments made in the claim petition, and the evidence available on record.

In the claim petition, the claimants mentioned the policy particulars of the crime lorry as Policy No.5049/03, valid from 14.11.2002 to 13.11.2003. The accident occurred on 28.03.2003, therefore, it is claimed that the policy was in subsistence as on the date of the accident. Ex.A-5 is the accident report form of the Motor Vehicles Inspector. In the said report, it is noted that policy bearing No.5049/2003 is insured with the appellant – insurance company, and valid up to 13.11.2003.

Ex.B-1 is the letter addressed by the Senior Divisional Manager of the Oriental Insurance Company to the Divisional Officer, Kurnool, dated 21.02.2005, to furnish copy of the policy of the crime vehicle bearing AP 28 R 4678 under cover notice/Policy No.433100/2003/5049. In the said letter it is mentioned that the period of insurance of the policy is from 14-11-2002 to 13-11-2003. So, as per Ex.B-1 cover note of policy, the insurance of the crime vehicle was in subsistence as on the date of the accident on 28.03.2003. In pursuance of the said letter dated 21.02.2005, and even as per the prior letters addressed by the Senior Divisional Manager to the Divisional Officer, Kunrool branch dated 08.09.2004 and 16.12.2004, the copy of the policy was not furnished. Under Ex.B-2, the Divisional Officer, Kurnool, addressed letter stating that insurance of policy

No.433100/4/0/2002/2392 of the crime vehicle is from 12.11.2001 to 11.11.2002. Here it is to be conspicuously noticed that under Ex.B-1, cover note of the policy was mentioned as No.433100/2003/5049, but the Divisional Officer under Ex.B-2, mentioned the cover note as policy No.433100/4/0/2002/2392 and stated that it is valid from 12.11.2001 to 11.11.2002. Therefore, it is clear that the policy particulars sought for under Ex.B-1 are different from the particulars of policy furnished under Ex.B-2. The particulars of the policy sought for under Ex.B-1, have not been furnished by the Divisional Officer, Kurnool.

In view of these circumstances, since the copy of the policy was not sent and also made available before the court and in view of Ex.B-1 cover note of policy mentioning that the policy of the crime vehicle bearing No. 433100/2003/5049, is valid up to 13.11.2003, in my considered view, the Tribunal has rightly held that the policy was in subsistence as on the date of the accident.

Coming to loss of earnings of the deceased, P.W.1, deposed that deceased was working as civil mason and was earning an amount of Rs.4,500/- per month. But the claimants did not produce any evidence in support of this claim. Therefore, the Tribunal treating the deceased as casual labour, taken daily wages as Rs.75/- and at Rs.2,250/- per month and Rs.27,000/- per annum and deducting 1/3rd of income, towards his personal expenses, assessed the income of the deceased at Rs.18,000/- per annum. As per Ex.A-4, postmortem certificate, the age of the deceased was mentioned as 35 years. Considering that multiplier 17 would be appropriate,

the Tribunal applying the same, granted an amount of Rs.3,06,000/- towards loss of income. In addition to that the Tribunal granted Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses.

The contention of the learned counsel for the appellant is that as per the judgment of the Apex Court in Sarla Verma case (1 supra), for the age of the deceased, which is 35, the appropriate multiplier is 16, but Tribunal applied 17. Here, it is to be noticed that the claimants in the present case are six in number. Therefore, as per the judgment of the Apex Court in Sarla Verma case (supra), the deduction of personal expenditure from out of the income arrived at by the Tribunal towards loss of income of the deceased, shall be at the rate of $1/4^{\text{th}}$, but in the present case, the Tribunal deduced $1/3^{\text{rd}}$. Apart from that, as contended by the learned counsel for the claimants, as per the judgment of the Apex Court in Pranay Sethi's case (2 supra) under conventional heads viz., loss of estate, loss of consortium and funeral expenses, the claimants, in all, are entitled to Rs.70,000/-. In the present case, the Tribunal has awarded only Rs.17,000/-. Since the claimants have not preferred any appeal or cross-objections, this aspect is being not considered. In view of these circumstances and as the modification of multiplier from 17 to 16 would work out to meager reduction in loss of earnings arrived by the Tribunal, and if $1/4^{\text{th}}$ is deducted from income of deceased towards personal expenses, the amount that has to be taken for calculating compensation will increase and if conventional amount of Rs.70,000/- is granted towards loss of estate and consortium, the compensation that has to be granted will be more even if multiplier is

reduced from 17 to 16. In view of same, I am not inclined to interfere with quantum of compensation granted by Tribunal.

With regard to grant of interest on the compensation amount, the Apex court in *TAMILNADU STATE TRANSPORT CORPORATION LIMITED vs. S.RAJAPRIYA*⁴ taking note of the then prevailing rate of interest of bank deposits, directed for lowering the rate of interest fixed by the Tribunal at 9 per cent per annum and altered the same to 7.5 per cent. Following this judgment, the Apex Court in another judgment in *DHARMPAL vs. U.P. STATE ROAD TRANSPORT CORPN.*⁵ granted interest at the rate of 7.5 per cent per annum. In view of the same, the interest awarded by the Tribunal on the compensation amount, is reduced from 9 per cent, to 7.5 per cent per annum.

For the foregoing reasons, the appeal is partly allowed to the extent indicated above with regard to reduction in rate of interest, and the rest of the award is confirmed.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

Date:08—02—2018

AVS

Note: L.R. copy to be marked.
B/O

⁴ AIR 2005 SC 2985

⁵ MANU SC 7680 2008