

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.637 of 2011

JUDGMENT :

The appellants/claimants aggrieved by the Award and Decree dated 3.10.2008 in M.V.O.P. No.868 of 2007 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Guntur, awarding the compensation of Rs.1,70,000/- with interest at 7% per annum from the date of the petition till the date of realization against respondents and which shall be deposited by them within two months from the date of the award, preferred this appeal.

2. The claim of the appellants in brief is that appellants 1 and 2 - petitioners 1 and 2 in O.P. are parents and the 3rd appellant - petitioner No.3 is brother of the deceased Abdul Kalam. While so, on 13.7.2007 at 8 PM while the deceased Abdul Kalam was proceeding on a Hero Honda passion motorcycle bearing No.AP 7 AB 8296 along with a pillion rider and when reached near Tummapudi cross road bridge of Duggirala, the lorry bearing No.AP 09 X 9219 came with high speed in rash and negligent manner in opposite direction and hit the motorcycle. The deceased Abdul Kalam sustained grievous injuries and while shifting to the hospital succumbed to injuries.

3. Respondents 1 and 3, who are said to be owners, were set ex parte. The 2nd respondent/Insurance Company filed counter contending that the claimants have to prove age, occupation, income of

the deceased and manner of the accident. The accident occurred due to the negligence of the deceased himself who had no licence to ride the motorcycle, hence claimants are not entitled for any compensation.

4. Basing on the pleadings and after hearing, the following issues were settled for trial :

1. Whether the deceased died in the accident caused due to rash and negligent driving of the lorry bearing No.AP 09 X 9219 by its driver?
2. Whether the petitioners are entitled for compensation? If so, what would be the just amount of compensation that the petitioners would be entitled to and against whom?
3. To what relief?

5. In support of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A6 were got marked. No oral or documentary evidence was adduced by respondents.

6. Now, the point that arises for determination is :

“Whether the Award and Decree suffer from any legal infirmities warranting interference in the appeal?”

The contention of the appellants is that the Tribunal failed to consider that the deceased was earning Rs.150/- per day before the death and erroneously took notional income, which cannot be a basis to determine the loss of earnings. It is further contended that the Tribunal should have applied minimum wages to determine the future loss of earnings. The Tribunal ought to have believed the evidence of P.W.2 and found that the deceased was a Mechanic and granted the compensation.

Per contra, the Respondent/Insurance Company contended that absolutely there is no evidence of income and particularly to the claim that the deceased working as Mechanic as on the date of the accident. In the absence of any evidence, the Tribunal is right in taking the notional income and also considering the age of the mother and applying the multiplier in assessing the compensation. It is further contended that since the deceased was unmarried, 50% of the income has to be deducted towards the expenses of the deceased while computing the compensation.

7. The mother of the deceased Shaik Abdul Kalam, who is the 1st claimant, was examined as P.W.1. In the evidence affidavit she reiterated the pleadings in the claim petition. Admittedly, P.W.1 is not an eye-witness to the accident. In the F.I.R. as well as in claim petition it was asserted that at the time of the accident the deceased was riding the motorcycle with a pillion rider Shaik Rasool, who was examined as P.W.2. Ex.A1 is C.C. of F.I.R., Ex.A6 is C.C. of altered F.I.R., Ex.A2 is C.C. of charge-sheet, Ex.A3 is inquest report and Ex.A5 is M.V.I. report. In Ex.A1 as alleged in the charge-sheet under Ex.A2, the Investigating Officer clearly asserted that on 13.7.2007 at 7.30 PM while P.W.2 as a pillion rider and deceased as a rider proceeding on motorcycle and when they reached Thummapudi cross-road, a lorry bearing No.AP 9 X 9219, driving by its driver with high speed in rash and negligent manner, came in opposite wrong direction and hit the motorcycle from behind. In Ex.A1 there is clear assertion of

involvement of the said lorry. Had the driver drove the lorry with care and caution soon after observing the motorcycle, he would have applied breaks and avoided the accident. It appears from the evidence of P.W.2 and the documentary evidence Exs.A1 to A3 that the driver has not taken any care while driving the lorry, more so, the MVI under Ex.A5 opined that there is nothing to suggest that the accident was due to mechanic defects of the lorry. The inquestdars under Ex.A3 opined that the accident occurred due to rash and negligent driving of the driver of the lorry. The Investigating Officer filed the charge-sheet against the driver of the said lorry under Ex.A2.

8. In the evidence of P.W.2, as well as in the report under Ex.A3, it is clearly stated that the lorry came on wrong side in opposite direction and hit the motorcycle resulting grievous injuries to the deceased. The respondents having taken the plea of negligence on the part of the deceased himself, did not choose to examine any of the witnesses including the driver of the lorry. No rebuttal evidence is produced to rebut the evidence of P.W.2 and Exs.A1 to A3 and A5.

9. In the absence of any such rebuttal evidence, the Tribunal came to the right conclusion that if the deceased was responsible for the accident, in the natural course of events, the driver of the said lorry would be given report to the Police, but he did not choose to give any such report, on the other hand, the police, who investigating the accident, filed charge-sheet – Ex.A2 against the driver of the lorry finding that the accident was due to rash and negligent driving of the

driver of the lorry. In the absence of any such rebuttal evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP 9 X 9219. Such a finding is legal, valid and does not suffer from any legal infirmities warranting interference in the appeal.

10. Coming to the income of the deceased, except the oral evidence of P.W.1, there is no piece of paper filed showing that the deceased was qualified mechanic, working as mechanic and earning Rs.150/- per day. Absolutely no piece of paper was placed before the Tribunal showing that the deceased was qualified mechanic and running any mechanic shop. If really the deceased was running the mechanic shop, he would have obtained the licence and claimants should have produced the same. In the absence of any such evidence, the Tribunal was perfectly right in disbelieving the evidence of P.W.1 that her son was a qualified mechanic and used to earn Rs.150/- per day.

11. Absolutely there is no evidence to establish the avocation and income of the deceased at the time of the accident. In the absence of any such evidence, the Tribunal took the notional income of Rs.15,000/- per annum as income of the deceased and also deducted 1/3rd towards his personal expenses and arrived contribution to the family at Rs.10,000/- per annum.

12. In the case of *Kishan Gopal and another Vs. Lala and Others* (2013 (6) ALD 59 (SC)) the Apex Court held that, taking into

consideration the fact that the value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of **Sarla Verma V. Delhi Transport Corporation** (2009(3) ALD 83 (SC)) applied multiplier '15'.

13. According to the evidence of P.W.1, her son was 22 years old by the date of death and working as Mechanic. Under Ex.A2 – charge-sheet, Ex.A3 – inquest report, Ex.A4 – PME report, Ex.A6 – altered F.I.R. the age of the deceased was noted as 22 years. As already discussed above, there is no proof of income of the deceased at the time of the accident. By relying on the above decision, the income of the deceased was rightly taken as Rs.30,000/- per annum and taking the age of the mother as 44 years, applied multiplier '15'. As per **Sarla Verma's case** the relevant multiplier applicable to the age group of 41 to 45 is '14', therefore, the Tribunal took multiplier '15' erroneously.

14. In the case of **Rajesh Vs. Rajbir Singh** ((2013) 9 SCC 54) the Apex Court observed that in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be

enhanced for the purpose of computation of compensation; (i) by 50% where his age was below 40 years, (ii) by 30% where he belonged to age group of 40 to 50 years, and (iii) by 15% where he was between age group of 50 to 60 years.

15. As per the above decision, since the deceased was below 40 years, he is entitled an addition 50% of the income towards future prospects. After adding 50% of the income, the income of the deceased comes to Rs.45,000/- per annum (30,000 + 15,000) and after deducting 50% from it towards the expenses of the deceased, it comes to Rs.22,500/-. By applying multiplier '14', the dependency comes to Rs.3,15,000/-. Besides that, claimants also entitled to Rs.15,000/- towards loss of estate and another Rs.15,000/- towards funeral expenses and another Rs.20,000/- towards loss of love and affection. The Tribunal has rightly not awarded compensation to the 3rd petitioner as he being the major. The 2nd petitioner, being the father and earning member, is not dependent and he is also not entitled for compensation. Therefore, the 1st petitioner alone is entitled to entire compensation of Rs.3,65,000/- with interest at 7.5% per annum from the date of the petition till the date of realization.

16. In the result, the appeal is partly allowed while setting aside and modifying the award and decree dated 3.10.2008 in M.V.O.P. No.868 of 2007 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Guntur, and passed the modified award for Rs.3,65,000/- against the respondents in O.P. with proportionate

costs and interest at 7.5 % per annum from the date of petition 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 one month from the date of receipt of a copy of the appeal judgment. On such deposit, the 1st appellant is permitted to withdraw the same.

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

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

01st August, 2018

skmr

JUSTICE N.BALAYOGI

