THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.548 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 26.03.2009 passed in M.V.O.P.No.435 of 2007 by the Chairman, Motor Accidents Claims' Tribunal-cum-II Additional District Judge, Guntur, granting compensation of Rs.1,57,000/- as against the claim of Rs.2,10,000/-, for the death of the deceased-Ankamma Rao.

The appellants-claimants filed claim petition under Sections 163-A and 140 of Motor Vehicle Act alleging that on 27.02.2007 while the deceased Ankamma Rao was travelling along with other coolies in the offending vehicle i.e. Tipper Lorry bearing No.AP16W 3379 towards Guntur for unloading the metal and on the way near Srinivasa Colony at Perecherla of Guntur District at about 4.00 a.m. the driver of the tipper drove the tipper in a rash and negligent manner due to which the tipper turned turtle, as a result of which, the deceased died on the spot.

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

The second respondent-Insurance Company filed written statement denied the allegations in the claim petition specifically stating that the policy issued by the second respondent covers only the risk of coolies but not unauthorized passengers. The deceased was travelling as unauthorized passenger and the driver of the offending vehicle was not having valid driving license. The vehicle was not having valid permit and fitness. As such, there are violations of terms of the Policy and also the provisions of the M.V.Act.

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

1) Whether the accident occurred due to rash and negligent driving of the driver of the Tipper Lorry bearing Regd.No.AP16 W 3379 by its driver?
2) Whether the petitioners are entitled to compensation and if so, to what amount and against whom?

3) To what relief?

On behalf of the claimants, PW-1 was examined and Exs.A.1 to A.5 were got marked. R.W.1 was examined on behalf of the second respondent-Insurance Company and Exs.B.1 to B.3 were got marked. The Tribunal considering the documentary evidence i.e. Ex.A.1-CC of FIR, Ex.A.2-CC of Inquest report, Ex.A.3-CC of Post-mortem report, Ex.A.4-CC of MVI Report and Ex.A.5-CC of charge sheet, coupled with the evidence of P.W.1 who deposed in the form of affidavit that the deceased was travelling as coolie on the offending vehicle at the time of accident and based on report given by T.Murthaih(who was examined as P.W.2 in O.P.No.321/2007 which arose out of the same accident), came to the conclusion that the accident occurred due to rash and negligent driving of driver of the offending vehicle. Hence, issue No.1 was answered in favour of the claimants. The Tribunal found that age of the deceased '35' years was not based on any scientific examination. Hence, the Tribunal added few years to the apparent age of the deceased and thereby held that the age of the deceased would be between 40-45 years at the time of accident for which the Tribunal applied the multiplier of '15' years. The Tribunal considered the notional income of the deceased as Rs.15,000/- per annum as per Schedule II of the M.V. Act as the claimants failed to prove the income of the deceased. Thus, after deducting 1/3rd from the annual income towards personal expenses, the annual contribution of the deceased to the family was assessed as Rs.10,000/-. After applying the multiplier of '15', the loss of dependency was arrived at Rs.1,50,000/-. In addition to the above, the Tribunal granted Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses. Thus, in total the Tribunal granted Rs.1,57,000/- towards compensation with proportionate costs and interest @ 7.5% per annum payable by the 1st respondent-owner of the offending vehicle.

Aggrieved by the quantum of compensation, the present appeal came to be filed by the appellants-claimants.

Learned counsel for the appellants would contend that the Tribunal awarded less amounts towards loss of Consortium and funeral expenses. He would also contend that no amount was granted towards loss of estate. He would contend that the appellants are entitled for Rs.70,000/- under conventional heads. He would further contend that the Tribunal grossly erred in fixing the liability on the first respondent owner of the offending vehicle. As the offending vehicle is insured with second respondent, both the respondents are jointly and severally liable to pay the compensation amount. In support of his contention, he placed reliance on ***Manuara Khatun and others vs. Rajesh Kr. Singh and others***[1] and ***Shivawwa and another vs. Branch Manager, National India Insurance Company Limited and another***[2] wherein the Hon'ble Supreme Court has directed to follow the principle of Pay & Recovery i.e. the Insurance Company to pay compensation amount and then to recover the same from the owner of the vehicle.

In the facts and circumstances of the case and in considered view of this Court, the Tribunal erred in taking the notional income of the deceased at Rs.15,000/- per annum. As seen from the decision of the Hon'ble Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***[3], the income of the daily wage earner has to be taken at Rs.4,500/-. Hence, considering the facts of the present case, this Court is of the view that the income of the deceased can be taken as Rs.3,500/- per month. If 1/3rd is deducted therefrom towards personal expenses, the annual contribution of the deceased to his family would be Rs.27,996/-. As per Ex.A.3 Post-Mortem certificate, the age of the deceased at the time of the accident was '35' years. However, the Tribunal has wrongly adopted the multiplier of '15'

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[1] 2017 (2) ALD 65 (SC)
[2] (2018) 5 SCC 762
[3] 2011 (6) ALT 48 (SC)

considering the age of the deceased to be between 40-45 years, by adding 5 years to the age mentioned in Ex.A.3, without assigning any reasons. As per the decision of the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Road Transport Corporation and another***[4], the multiplier applicable to the case on hand is '16' as the deceased was aged 35 years at the time of the accident. Hence, the loss of dependency would comes to Rs.4,47,936/- [Rs.27,996/- X 16]. In addition to loss of dependency, as per the ratio laid down in ***National Insurance Co. Ltd. Vs. Pranay Sethi***[5], the claimants are entitled for Rs.15,000/- towards of loss of estate and Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium. Thus, in total, the claimants are entitled for Rs.5,17,936/- with costs and interest @ 7.5% per annum from the date of petition till the date of realization. Further, in view of the ratio laid down by the Hon'ble Supreme Court in ***Manuara Khatun (1 supra) and Shivawwa (2 supra)***, wherein the Hon'ble Supreme Court has followed the principle of 'Pay and Recover', the second respondent-Insurance Company shall pay the compensation amount to the claimants and then recover the same from the first respondent-owner of the offending vehicle.

Though the compensation claimed by the claimants before the Tribunal was only Rs.2,10,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[6]**,** in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.5,17,936/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.3,07,936/-. Out of the total compensation of Rs.5,17,936/-, the first claimant-wife of the deceased is entitled for Rs.1,17,936/- with costs and interest and the remaining appellants i.e.

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[4] (2009) 6 SCC 121
[5] 2017(6) ALD 170 (SC)
[6] (2003) 2 SCC 274

claimants 2 to 5 are entitled for Rs.1,00,000/- each with proportionate interest. The entire compensation amount, duly deducting the amounts already deposited, if any, shall be deposited to the credit of the O.P. before the Tribunal within a period of two months from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are entitled to withdraw their respective share amounts, subject to payment of excess Court Fee.

Accordingly, the appeal is allowed to the extent indicated above.

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

(M.GANGA RAO, J)

20.09.2018
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