THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA.No.2684 of 2015

JUDGMENT: (*per the Hon'ble Smt Justice T. Rajani*)

This appeal is filed, impugning the judgment of XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad in OP.No.1809 of 2010 dated 26.02.2015 by virtue of which the tribunal below awarded only Rs.50,000/- under Section 140 of the Motor Vehicles Act, while dismissing the other claims of the claimants.

2. The facts of the case, briefly, are as follows:

On 10.01.2008, at about 2.30 PM, the deceased was proceeding from Vemulapalli side towards Vadapalli side, in his Hyundai Verna Car bearing No.AP 24 P 1449 and when he reached the outskirts of Nandipadu Village in by-pass road, one lorry bearing No.AP 7 XZ 1977 came in opposite direction, in a rash and negligent manner and dashed against the car of the deceased, as a result, the deceased got crushed and sustained fatal injuries and died on the spot. Both the vehicles were totally damaged.

The deceased was doing business, earlier to the accident and was earning Rs.50,000/- per month. Due to his sudden death, the claimants lost the said income and his support. Hence, the claim for compensation of Rs.60,00,000/-.

3. The tribunal below dismissed the claim considering that the accident occurred due to the sole negligence of the deceased. The appeal is filed on the grounds that the tribunal below wrongly held

that the accident occurred due to the rash and negligent driving of the deceased, without appreciating the evidence of P.W.2 properly, who is an independent and impartial witness and without there being any rebuttal evidence by respondent No.2. The tribunal below failed to appreciate that the appellants have proved that the accident occurred due to the rash and negligent driving of the lorry, by placing the evidence of P.W.2. The tribunal below failed to appreciate that respondent No.2 failed to prove Exs.B2 to B6 and no one was examined to prove the same. The tribunal below failed to appreciate the report of Motor Vehicles Inspector, Ex.A3 and the rough sketch plan, Ex.B5, which would establish that the accident occurred due to the heavy impact of the lorry.

4. Heard the learned counsel for the appellants and learned counsel for the respondent-insurance company.

5. Now the points that arise for determination before us are as under:

1. Whether the accident occurred due to the negligence of the driver of the lorry.
2. Whether the claimants are entitled for compensation as claimed by them.
3. To what result.

<u>POINT No.1</u>:

6. The report, in this case, was given by the driver of the lorry and naturally the case was registered against the deceased. But since the deceased died, the same stood abated. The tribunal below, by considering that the final report is filed only after thorough

investigation, held that the claimants failed to establish that the accident occurred due to the rash and negligent driving of the driver of the lorry. It also disbelieved the evidence of P.W.2, though it observed that he categorically deposed that there is rash and negligent driving on the part of the driver of the lorry and that the car was damaged, on the ground that he is not the complainant and that he is not aware of the contents of the FIR and the final report.

7. The counsel for the appellants draws our attention to the rough sketch of the scene of the accident, which is marked as Ex.B5. Ex.B5 shows that the vehicles were travelling on a road, which was 33 feet wide. From the centre, the road is 16½ feet wide on either side. The car was coming from Narketpally side towards Addanki side and the lorry was coming from Addanki side to Narketpally side i.e. in opposite direction to the car. The counsel for the appellants argues that the skid marks, which are noted in the rough sketch and the scene of the accident, show that the car was dragged to a distance of 20 feet from the scene of accident, which would clearly imply that the lorry was coming at a high speed. The skid marks started from a distance of one feet from the centre of the road and the scene of accident is at a distance of about 10 feet from the starting of the skid marks.

8. The facts are, that the car while overtaking the lorry, which is going ahead of it, dashed against the lorry. The 161 statement of P.W.1 is marked before the tribunal below as Ex.B6. A perusal of the said statement would clearly show that P.W.1 did not mince the words and stated that her husband, who was driving the car, tried to

overtake a lorry by going to the extreme right side of the road and dashed against the lorry coming from the opposite direction. It is the information given to her by a person, who was working in the fields nearby the scene of accident. The statement also reveals that on knowing about the accident she went to the sport along with her brother-in-law and she found the car at the extreme right side of the road.

9. The above facts would no doubt suggest that the deceased was negligent in driving the car.

10. However, the counsel for the appellants relies on a decision of the Supreme Court in HAZARI LAL v. STATE (DELHI ADMN.)[1] in support of his contention that the statement of witnesses under Section 162 Cr.P.C cannot be taken as substantive evidence. There cannot be any quarrel with the said proposition, but the contents of the statement can be taken into consideration for seeking corroboration with the other evidence on record and for the purpose of appreciating the contradictions between the evidence of the said witnesses and the statement made by her earlier. We are inclined to rely on the statement only to the said extent.

11. The counsel for the appellants also relied on a decision of the Supreme Court in HASIB v. STATE OF BIHAR[2] in order to draw support to his contention that the first information report cannot be taken as a basis to conclude that there was no negligence on the part of the driver of the lorry. It is observed by the Supreme Court that the

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[1] AIR 1980 SC 873
[2] AIR 1972 SC 283

report does not constitute substantive evidence, though it is important as conveying the earliest report about the occurrence. We do not propose to place any reliance on the first information report, without any corroboration. Hence, the said decision does not become relevant.

12. The counsel for the respondent relies on a decision of the Supreme Court in SURENDER KUMAR ARORA v. DR. MANOJ BISLA[3] wherein it was observed that the entire responsibility is on the part of the deceased to establish that respondent No.1 drove the vehicle in a rash and negligent manner which resulted in fatal accident. We are of the opinion that the proof of fact may be by virtue of positive evidence or by establishing the probabilities of the case, from the evidence adduced by the parties. In this case, the rough sketch acts as a proof for the manner of the accident. Hence, we rely on the same.

13. It appears from the rough sketch that the car started applying brakes, 10 feet from the scene of accident, which would clearly imply that the driver of the lorry was able to observe the car before it dashed against it and after the accident, the car was dragged to a distance of 20 feet, which would depict the speed at which the lorry was going. However, no fault can be found on the part of the lorry, as primary reason for the accident was the act of overtaking by the car. But, if the lorry had not come at such a speed, the impact of the accident would not have been to the extent of causing the death of the deceased. Even if there are no vehicles ahead of the lorry, the vehicles

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[3] (2012) 4 SCC 552

coming on a highway, cannot be expected to come at such a high speed, which is evident from the sketch of the scene of the accident. Hence, by relying on the rough sketch, we are inclined to conclude that there is some negligence on the part of the lorry also and we hold the negligence, on the part of the driver of the lorry, as being to an extent of 30%.

The point is accordingly answered.

POINT No.2:

14. As regards the amount of compensation, the deceased was stated to be an income tax assessee. He had a PAN number. The income tax returns were also filed for the years 2006-07 and 2007-08. He was a Director in the rice mill and was also an employee in the said rice mill. He was being paid salary for working in the rice mill. The salary reflected in the income tax returns for the year 2006-2007 is Rs.3 lakhs per annum and for the years 2007-08, it is Rs.4,50,000/- per annum.

15. The counsel for the appellants seeks the Court to take the said salary into consideration while arriving at the income of the deceased.

16. There need not be any reason to disbelieve the income tax returns. Form-16 is also filed, which would lend support to the income tax returns. Hence, we are inclined to take Rs.4,50,000/- as the salary of the deceased per annum.

17. Following the latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI[4] the future

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[4] 2017 ACJ 2700

hike in the income at 25% is also to be considered and the standardized income would come to Rs.4,50,000/- + (Rs.4,50,000/- x 25% = Rs.1,12,500/-) = Rs.5,62,500/-. Out of the said amount, $1/4^{th}$ has to be deducted, as the claimants are four in number, as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[5]. Hence, after deducting $1/4^{th}$ towards personal expenditure of the deceased, the loss of future income would come to Rs.5,62,500/- – (Rs.5,62,500/- x ¼ = Rs.1,40,625/-) = Rs.4,21,875/-. The multiplier '14' is relevant for the age of the deceased. Hence, the loss of future income would come to Rs.4,21,875/- x 14 = Rs.59,06,250/-. Apart from the above, Rs.40,000/- is awarded to the first claimant towards loss of consortium, Rs.15,000/- is awarded under the head loss of estate and Rs.15,000/- is awarded under the head funeral expenses as per the decision in PRANAY SETHI's case (supra). Hence, the claimants are entitled to total compensation of Rs.59,06,250/- + Rs.40,000/- Rs.15,000/- + Rs.15,000/- = Rs.59,76,250/-. Out of which 70% has to be set off towards negligence of the deceased, which would come to Rs.59,76,250/- - (Rs.59,76,250/- x 70% = Rs.41,83,375/-) = Rs.17,92,875/-.

18. Hence, the claimants are entitled to total compensation of Rs.17,92,875/- with interest at 7% per annum with proportionate costs from the date of claim petition till realization payable by respondents jointly and severally. Out of the said amount, Rs.50.000/- has to be deducted as it was already ordered by the court below,

[5] (2009) 6 SCC 121

towards no fault liability. Then the compensation would be Rs.17,42,875/-. The first claimant, being the wife of the deceased, is entitled to compensation of Rs.7,42,875/-; claimants 2 and 3 are entitled to compensation of Rs.4,00,000/- each and claimant No.4 is entitled to compensation of Rs.2,00,000/-. The compensation awarded shall be paid by respondents within one month from the date of receipt of copy of the judgment. After the deposit of the amount, since the third claimant also seems to have become major during the pendency of the appeal, the claimants are permitted to withdraw half of the amount of the compensation awarded to them respectively, along with proportionate interest and costs.

The point is accordingly answered.

<u>POINT No.3</u>:

In view of the above, the civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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SURESH KUMAR KAIT, J

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T. RAJANI, J

April 27, 2018
DSK