

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 1049 OF 2011

JUDGMENT:

The appellant is the 3rd respondent in M.V.O.P.No.16 of 2005, filed this appeal being aggrieved by the award and decree passed in M.V.O.P.No.16 of 2005 dated 12.01.2011 by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nellore, granting an amount of Rs.4,72,000/- against the claim of Rs.10 lakhs for the death of one Sivanarayana S/o.Venkatappayyaiah (hereinafter referred to as 'the deceased') in the motor accident occurred on 18.06.2003.

2. The dependants of the deceased – wife, mother and minor children of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act, 1988 alleging that the deceased was aged about 27 years at the time of accident and he was working as Supervisor of proclainer at Vijayawada and used to earn Rs.10,000/- per month. On 18.06.2003, while the deceased and one Malli Srinivasulu were proceeding on a motorcycle from Nellore to Mannavarpadu village and at about 1.00 p.m. when they reached near Ramaiah thota after crossing Srilanka colony, Kothuru of Nellore rural mandal, a tractor bearing No.AP21D 2352 came in opposite direction, driven by its driver in a rash and negligent manner with high speed and dashed against the motor cycle by coming on the

wrong side, as a result the deceased fell down and sustained severe injuries. Immediately, he was shifted to Government hospital, Nellore, there from he shifted to Bollineni Super Speciality Hospital, Nellore and while undergoing treatment, the deceased succumbed to injuries on 28.08.2003. The claimants spent nearly Rs.2 lakhs for the treatment of the deceased. On account of premature death of the deceased, the claimants lost their dependency as the deceased was the sole breadwinner of the family. Hence, they filed claim petition of Rs.10 lakhs against the registered owner (5th respondent), subsequent purchaser (6th respondent) and the real owner/appellant herein, who was in possession of the tractor at the time of accident.

3. The 5th respondent filed counter contending that he is a resident of Muthaluru Village, Rudravaram Mandal, Kurnool District. He was the owner of the Tractor bearing No.AP21D 3253. He sold the said tractor to 6th respondent - Kata Sudhakar Reddy S/o.Sundara Rami Reddy of Vidavalur Village of Nellore District on 08.06.2003. He signed on No objection certificate, executed a sale letter in favour of 6th respondent and delivered the tractor to him. He was under the impression that the said vehicle was transferred in the name of 6th respondent as he signed No objection certificate at RTO office. On receiving the Court notice and on enquiries, he found that 6th respondent sold the tractor to the appellant - Duvvuru Siva Kumar Reddy, who is a resident of

Magunta Layout of Nellore. At the time of accident, the tractor was in possession of appellant being the real owner and the accident took place near Ramaiah thota in Nellore district. He further stated that having sold the vehicle, he was not the owner of the vehicle and he was not in possession of the offending vehicle at the time of accident and the driver was not working under him. After the accident, a case was registered in Nellore Rural Police Station. The appellant took delivery of the tractor from police station representing that he was the real owner of the tractor. The driver who drove the tractor at the time of accident was the employee of the appellant. Therefore, there was no relationship of 'Master and Servant' between the 5th respondent and the driver. So, he would not be held vicariously liable to pay any compensation. He also denied the nature of accident, avocation of deceased and income of deceased.

4. The 6th respondent filed counter denying the averments of the claim petition and pleaded that he never purchased the tractor from 5th respondent on 08.06.2003 and he never obtained No objection letter from 5th respondent and he never executed any sale letter in favour of 3rd respondent. He does not know the 5th respondent at all, and therefore, he was not the owner of the Tractor bearing No.AP21D 3253 and the 5th respondent might have created the aforesaid documents. He never sold the offending vehicle to the appellant and he was

not aware of the accident, and therefore, he pleaded that he is not responsible to pay any compensation to the claimants.

5. The appellant filed counter denying the averments of the claim petition and he pleaded that he has nothing to do with the Tractor bearing No.AP21D 3253 is concerned and so he is not liable to pay any compensation to the respondents 1 to 4.

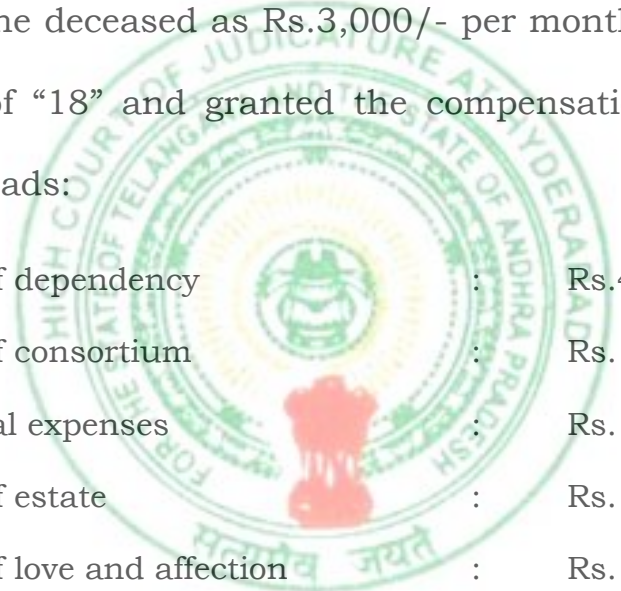
6. Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident in question is occurred, if so, was it due to the fault of the driver of Tractor bearing registration No.AP.21.D.3253?
- 2) Whether the claimants are entitled to the compensation, if so, to what amount and from which of the respondents?
- 3) To what relief?

7. During the course of trial, PWs 1 to 4 were examined and Exs.A.1 to A.4 were got marked. On the other hand, RW1 and RW2 were examined and Exs.B.1 and B.2 were marked for the respondents.

8. The Tribunal, considering the evidence of PW3 and documents Exs.A.1 to A.3, came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle i.e., Tractor bearing No.AP21D 3253 and in the accident, the deceased sustained severe injuries and died while undergoing treatment.

9. The Tribunal, considering the evidence of PW1 and PW2 coupled with Ex.A.4 (Salary certificate issued by Earth Movers, Vizag), opined that PW2 is unable to give satisfactory evidence how she secured Ex.A.4 and who gave it and the claimants failed to examine any person from the Earth Movers who issued Ex.A.4 and held that the deceased was working as Supervisor and earning Rs.10,000/- per month is not established as the evidence of PW2 is suspicious as to how she got Ex.A.4. Therefore, the Tribunal has taken the income of the deceased as Rs.3,000/- per month, applied the multiplier of “18” and granted the compensation under the following heads:



Loss of dependency	:	Rs.4,32,000/-
Loss of consortium	:	Rs. 15,000/-
Funeral expenses	:	Rs. 5,000/-
Loss of estate	:	Rs. 5,000/-
Loss of love and affection	:	Rs. 5,000/-
Transport and Medical expenses	:	Rs. 10,000/-

The Tribunal granted total compensation of Rs.4,72,000/- and the same is payable by the appellant and the respondents 5 and 6 jointly with proportionate costs and interest @ 7% per annum.

10. The Tribunal further held that after the accident, when the tractor was under seizer, the appellant paid the necessary taxes before the Regional Transport Authority and got the release order and obtained possession of the tractor from the

concerned police, and therefore, the appellant was in actual possession and control of the tractor at the time of accident and he is also liable to compensate the claimants. It is further held that the claimants have examined PW4 – Head Constable from Nellore Rural Police Station who deposed that according to C.D. maintained in Crime No.143 of 2003, the appellant obtained release order from the RTO, produced the same in the police station and took delivery of the tractor under acknowledgement.

11. The Tribunal, based on the aforesaid evidence, came to the conclusion that 5th respondent was the registered owner of the tractor and he sold the tractor to 6th respondent on 08.06.2003 and in turn the same was sold to the appellant – Duvvuru Siva Kumar Reddy. The appellant was in possession of the offending vehicle and he got released the vehicle from the Police Station seized in Crime No.143 of 2003 of Nellore Rural Police Station as per Ex.B.1.

12. The Tribunal based on the evidence on record came to the conclusion that the appellant is the real owner of the tractor and he is in possession and control of the offending vehicle along with the driver. The offending vehicle was used by the appellant for carrying the metal stones from Mannavarappadu quarry. Based on the said evidence, the Tribunal held that the 5th respondent being the registered owner, the 6th respondent being the subsequent purchaser

and the appellant being the real owner who is in possession and control of the offending tractor are jointly and severally liable to pay compensation to the claimants.

13. Sri V.Roopesh Kumar Reddy, learned counsel for the appellant, would contend that the 5th respondent is the registered owner of the offending vehicle – tractor and the appellant has nothing to do with the offending vehicle. He further contended that mere releasing of the offending vehicle without there being any legal evidence, the liability would not be fastened on the appellant. In the absence of any legal evidence to the effect that the appellant is the real owner and in control of the offending vehicle and the driver of the offending vehicle is under his control would not be believed. Hence, the appellant is not liable to pay the compensation and the Tribunal grossly erred in fastening the liability on the appellant and he has not disputed the quantum of compensation awarded by the Tribunal.

14. Per contra, Sri P.Nagender Reddy, learned counsel for the 5th respondent herein, would contend that the Tribunal has rightly come to the conclusion that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle with high speed, based on the evidence of PWs 1 and 2 and Exs.A.1 and A.3. In the accident, the deceased sustained severe injuries and thereafter he succumbed to the injuries while undergoing treatment and

the Tribunal rightly granted compensation of Rs.4,72,000/- based on the evidence available on record.

He further contended that the Tribunal based on the evidence of RW1 and RW2 and Ex.B.1, came to the conclusion that the appellant is the real owner and in possession and control of the offending vehicle along with driver who caused the accident. As per the evidence of PW4 and Ex.B.1, the appellant got released the vehicle from the police custody and in the evidence, it came to light that the appellant is in control and possession of the offending vehicle along with driver and he was using the offending tractor for transportation of mining metal stones from Mannavarappadu quarry being the stone metal contractor. Hence, the Tribunal has rightly fastened the liability on the registered owner as well as the appellant – real owner and the same could not be found fault with.

15. In the facts and circumstances of the case and having heard the rival contentions of the counsel, this Court found that the deceased sustained severe injuries in the accident occurred on 18.06.2003 due to rash and negligent driving of the offending vehicle driven by its driver and dashed against the motor cycle in which the deceased was travelling and later the deceased died while undergoing treatment. The Tribunal rightly held that the accident was occurred due to rash and

negligent driving of the driver of the offending vehicle, based on the evidence of PW3 and Exs.A.1 and A.3.

16. The Tribunal, considering the evidence of PW1 and PW2 coupled with Ex.A.4 (Salary certificate issued by Earth Movers, Vizag), opined that PW2 was unable to give satisfactory evidence how she secured Ex.A.4 and who gave it and the claimants failed to examine any person from the Earth Movers who issued Ex.A.4 and held that the deceased was working as Supervisor and earning Rs.10,000/- per month is not established as the evidence of PW2 is suspicious as to how she got Ex.A.4. Therefore, the Tribunal has taken the income of the deceased as Rs.3,000/- per month, applied the multiplier of "18", deducted 1/3rd towards personal expenses and awarded Rs.4,32,000/- towards loss of dependency. The Tribunal also granted Rs.15,000/- to the 1st claimant towards loss of consortium, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate. The Tribunal also granted Rs.5,000/- to the respondents 3 and 4 being the minor children of the deceased, towards loss of love and affection besides granting Rs.10,000/- towards transport and medicines, and granted total compensation of Rs.4,72,000/- with proportionate costs and interest @ 7% per annum and payable by the appellant and respondents 5 and 6 jointly and severally and the same could not be found fault with.

17. The 5th respondent is the registered owner of the offending vehicle i.e., Tractor bearing No.AP21D 3253 and as per the evidence of RW2, he sold the said vehicle to 6th respondent on 08.06.2003 and No objection certificate was executed along with the sale letter in favour of 6th respondent and delivered the tractor to him. The 6th respondent in turn sold the offending vehicle to the appellant – Duvvuru Siva Kumar Reddy and the appellant was in possession of the offending tractor and in control of the driver of the offending vehicle at the time of accident, as the said fact was evidenced from Exs.A.1 and A.3 besides Ex.B.1 and as he was got released the vehicle from the police station. It appears that he used the offending tractor for transportation of metal stones from Mannavarappadu quarry being the contractor.

18. In those circumstances, the Tribunal has rightly fastened the liability on the registered owner, subsequent purchaser as well as the real owner as the accident was caused due to the rash and negligent driving of the driver of the offending vehicle, who was under the control of appellant/real owner and the same could not be found fault with. Further, the appellant used the offending tractor, in utter violation of law, without taking insurance policy and the motor vehicle tax. He paid the motor vehicle tax after the accident and got released the offending tractor from the police. The police strangely released the tractor to the appellant, on the strength of the Tax payment receipt.

19. Hence, the appeal is dismissed, confirming the award and decree dated 12.01.2011 passed in M.V.O.P.No.16 of 2005. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

23-11-2018
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