THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.4752 of 2004

JUDGMENT:

This is an appeal by the 1st respondent/insurance company, under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 08.04.2004, of the learned Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, passed in O.P.No.1845 of 2002.

1.1 At the outset, it may be noted that the instant appeal is filed contending that the quantum of compensation awarded to the claimants is high and excessive and that the pleaded accident resulting in the death of the deceased occurred due to the sole rashness and negligence of the deceased rickshaw puller and not due to the sole rash and negligent driving of the driver of the lorry involved in the accident and that the Tribunal erred in fastening the liability on the insurance company with which the lorry was insured and in awarding huge compensation to the claimants.

2. I have heard the submissions of Sri *Naresh Byrapaneni,* learned counsel representing Sri *E.Venugopal Reddy,* learned Standing Counsel appearing for the appellant/insurance company ('insurance company', for brevity), and of Sri *K.Siva Reddy,* learned counsel appearing for the respondents 1 to 3/claimants ('claimants', for brevity). The 4th respondent herein is the owner-cum-insured of the lorry involved in the accident. The notice sent to him by Registered Post was returned as unclaimed. Therefore, there is valid service on the 4th respondent; however, the 4th respondent did not enter appearance. In the considered view of this Court, this appeal can be heard and disposed of on its merit even in the absence of the owner-cum-insured of the lorry before this Court, as the insurance company by disputing the finding of the Tribunal that the accident had taken place due to the rash and negligent driving of the driver of the lorry and by stating that the deceased rickshaw puller was solely responsible for the accident is in a way supporting the case of the owner-cum-insured of the lorry.

3. The introductory facts are as follows:

The claimants herein, who are the legal heirs of the deceased, filed the instant claim petition claiming compensation for the loss sustained by them on account of the untimely death of the deceased due to the injuries sustained by him in the subject accident. The 2nd respondent/owner-cum-insured of the lorry involved in the accident remained *ex parte* before the Tribunal. The 1st respondent insurance company resisted the claim petition. At trial, the 3rd claimant and a supporting witness were examined as PWs1 & 2 and exhibits A-1 to A-6 were marked on the side of the claimants. No oral evidence was adduced on the side of the 1st respondent/insurance company. Exhibit B-1, copy of the policy, was marked. On merits and by the orders impugned in this appeal, the Tribunal partly allowed the claim petition with proportionate costs and awarded a compensation of Rs.3,86,000/- payable with interest at 9% per annum simple from the date of the petition till the date of deposit and fastened joint and several liability on the insured and the insurer to pay the said compensation to the claimants. As noted, aggrieved of the quantum of compensation awarded and the finding that the driver of the lorry was solely responsible for the accident, the insurance company preferred this appeal.

4. In view of the said two principal issues that are raised by the insurance company, the points that arise for determination are:

> **1. Whether the pleaded accident resulting in the death of the deceased occurred due to the sole rashness and negligence of peddling of the rickshaw by the deceased rickshaw puller and not due to the sole rash and negligent driving of the driver of the lorry involved in the accident as being contended by the appellant-insurance company?**
>
> **2. Whether the pleaded accident occurred due to the contributory negligence of the deceased rickshaw puller and the driver of the lorry involved in the accident as being alternatively contended by the appellant-insurance company?**
>
> **3. Whether the compensation awarded by the Tribunal is high and excessive in the facts and circumstances urged by the insurance company? And, if so, what shall be the reasonable, just and fair compensation to be awarded to the claimants?**
>
> **4. To what relief?**

5. **POINT Nos.1 & 2**:

The case of the claimants on the aspect relevant to the present questions is as follows: -

On 26.07.2002, R.Gopal, the deceased, proceeded on his rickshaw from Gachibowli towards Tolichowki. On the way, the lorry bearing Registration No.AP 12 T 378, being driven by its driver at a high speed in a rash and negligent manner, dashed the rickshaw of the deceased. The deceased succumbed to the injuries on the spot.

5.1 The defence of the insurance company is in the nature of denial. Further, the insurance company put the claimants to strict proof of the manner and method of the pleaded accident and their entitlement to the compensation claimed.

5.2 Learned Standing Counsel for the insurance company contended as follows: 'The accident was a result of rash and negligent peddling of the rickshaw by the deceased. The Tribunal erred in giving a finding that the accident was due to the sole rash and negligent driving of the driver of the lorry. The manner of accident clearly shows that the deceased was solely responsible for the accident. In any view of the matter, since the accident had occurred due to involvement of the rickshaw being peddled by the deceased and the lorry, the Tribunal ought to have held that the accident was due to the contributory negligence of the deceased and the driver of the lorry. Therefore, the Tribunal ought to have restricted the liability of the insurance company to the extent of the negligence of the driver of the lorry, who contributed to the accident.'

5.3 Per contra, learned counsel for the claimants, having supported the award, contended as follows: -

The Tribunal, having considered the oral and documentary evidence, particularly the crime records, viz., copies of First Information Report (Ex.A-1), Motor

Vehicle Inspector's Report (Ex.A-5) and Charge Sheet (Ex.A-6) recorded a finding that the driver of the lorry was solely responsible for the accident. The insurance company has not adduced any evidence in rebuttal to substantiate its plea that the accident was either due to the sole rashness and negligence of the peddling of the rickshaw by the deceased or due to contributory negligence of both the deceased and the driver of the lorry involved in the accident. The Tribunal having appreciated the evidence correctly recorded a finding that the driver of the lorry was solely responsible for the accident. The said finding does not call for any interference in the facts and circumstances of the case.

5.4 I have given earnest consideration to the facts and submissions.

5.5 PW1, the 3rd claimant is not an eye witness. PW2 who is said to be an eye witness supported the case of the claimants. In his cross-examination, he denied the suggestion that the lorry was proceeding on the correct side of the road and that the accident occurred as the rickshaw of the deceased came to the wrong side of the road. The contents of the certified copy of FIR-Ex.A-1, copy of the Motor Vehicle Inspector's Report-Ex.A-5 and the certified copy of Charge Sheet-Ex.A-6, which disclose that the investigation revealed that the driver of the lorry was solely responsible for the accident, corroborate the testimony of PW2. No evidence in rebuttal was adduced by the insurance company. Thus, on the basis of the evidence brought on record, it can safely be held that the pleaded accident occurred resulting in the death of the deceased due to the sole rash and negligent driving of the driver of the lorry and that, therefore, the finding of the Tribunal cannot be faulted. The points are accordingly answered against the insurance company.

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

The case of the claimants on this point, in brief, is this: - 'The deceased was of 22 years of age and was earning Rs.2,500/- per month at the time of accident. On account of the untimely death of the deceased due to his involvement in the subject accident, the claimants, who are his wife and parents, suffered shock and mental agony. They were depending upon the income of the deceased, who was the sole bread earner of the family. On account of his death, they suffered serious and irreparable loss. Hence, they filed the claim petition claiming a compensation of Rs.4,00,000/-.'

6.1 Per contra, the case of the insurance company is that the compensation claimed is high and excessive. Further, the insurance company put the claimants to strict proof of their entitlement to the compensation claimed or any part thereof.

6.2 Learned counsel for the insurance company contended as follows: - 'The Tribunal erred in fixing the income of the deceased and in determining the compensation. There is no basis for fixing the income of the deceased at Rs.2,500/- per month. The Tribunal ought to have applied lesser multiplier on the ground of uncertainty of earnings of a rickshaw puller. The Tribunal erroneously awarded Rs.15,000/- under the head 'Pain and Suffering' though the deceased suffered an instantaneous death at the spot. The interest awarded @ 9% is also on the higher side.'

6.3 Per contra, learned counsel for the claimants contended as follows:

The Tribunal, having considered that the deceased is a rickshaw puller and having regard to his age and the year of the accident, determined his earnings at Rs.2,500/- per month and awarded a compensation of Rs.3,86,000/- having regard to the legal position then obtaining. The claimants are entitled to more compensation than claimed. The Tribunal is having power to award more compensation than claimed, if the facts of the case warrant awarding such compensation, irrespective of the amount claimed. By any standards that may be applied, the compensation awarded is a meager amount, but unfortunately, the claimants did not prefer any appeal or cross appeal and, therefore, the quantum of compensation does not require any modification or downward revision. Hence, the Appeal is liable to be dismissed.

6.4 Dealing first with the quantum of compensation awarded to the claimants, which according to the insurance company is on the higher side, what is to be noted is that the deceased was of 22 years of age at the time of accident and was earning Rs.2,500/- per month according to the case of the claimants. Having regard to the contents of Ex.A-3 – Inquest Report and Ex.A-4 – Post Mortem Report, the Tribunal accepted the age of the deceased as 22 years and determined his income at Rs.2,500/- per month. The Tribunal applied multiplier 17 instead of multiplier 18. The Tribunal also did not make any addition to the income of the deceased towards his future prospects. However, after deducting 1/3rd from his income towards living and personal expenses, it determined the compensation under the head 'Loss of Dependency' at Rs.3,40,000/-; Rs.15,000/- under the head 'pain & suffering' and further awarded Rs.15,000/- each under the heads of 'Loss of Expectation of Life' and 'Loss of Consortium' to the 1st claimant/wife besides Rs.1,000/- towards 'Loss of Clothing'. Thus, the Tribunal awarded a total compensation of Rs.3,86,000/- by partly allowing the claim petition and granted interest @ 9% per annum from the date of the petition till the date of realization. Having regard to the legal position obtaining, this Court is of the considered view that by applying any standards, the compensation awarded to the claimants cannot be said to be high and excessive. Nonetheless, since the claimants are satisfied with the quantum of compensation awarded, they did not prefer any appeal assailing the award in that regard. Even though Rs.15,000/- was awarded by the Tribunal under the head 'pain & suffering', which the insurance company is contending as not awardable to the claimants in view of the fact that the death of the deceased occurred instantaneously; yet, at the same time, it is to be noted that while determining the compensation awardable to the claimants, the Tribunal failed to apply the appropriate multiplier and make an addition to the income of the deceased towards future profits and further failed to award appropriate eligible amounts under the heads 'loss of consortium', 'loss of estate' and 'funeral expenses' which shall respectively be Rs.40,000/-; Rs.15,000/- & Rs.15,000/- as per the decision in **National Insurance Company Limited v. Pranay Sethi**[1]. However, as

[1] 2017 ACJ 2700

noted, claimants being satisfied with the total compensation awarded did not assail the award. When the Tribunal awarded compensation under a head under which no compensation is awardable and at the same time failed to award compensation under a head under which compensation is awardable, this Court can strike a balance and refrain from interfering with the total compensation awarded to see that ultimately the compensation awarded, which is not high and excessive and reasonable is maintained. In that view of the matter, this Court finds that the contention of the insurance company that the compensation awarded is on the higher side deserves to be rejected being without any merit. Accordingly, the point is answered against the appellant/insurance company.

7. The insurance company is not challenging the joint and several liability along with the insured, to pay the compensation awarded to the claimants except on the ground that the driver of the lorry was not at all responsible for the accident, which contention is now negatived by this Court under points numbers 1 and 2 supra. Therefore, there are no other further issues to be adverted to and determined in this appeal. On the above analysis, this Court finds that the appeal is devoid of merit and is liable to be dismissed.

8. **POINT No.4:**

In the result, the Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Appeal shall stand closed.

M.SEETHARAMA MURTI, J

Date:08.03.2018
KL/Vjl