THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.3845 OF 2014

JUDGMENT:

Appellant-Insurance Company filed this appeal against the order and decree dated 27.12.2013 passed in O.P.No.1882 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad, granting compensation of Rs.11,58,000/- as against the claim of Rs.15,00,000/- to the respondents-claimants for the death of the deceased D.Nageshwar Rao @ Nagesh in the motor accident occurred on 19.04.2009.

Respondents-claimants, who are the wife, minor children and mother of the deceased respectively, filed claim petition under Section 166 read with Section 140 of the Motor Vehicles Act against the sixth respondent and appellant alleging that on 19.04.2009 while the deceased was proceeding on his motor cycle bearing No.AP 09AM 6936 from Karmanghat to Badichowdi via Dilsukhnagar at about 3.30 p.m. when he reached near APR Gardens, the offending car bearing No.AP 29BC 0026 came from Santoshnagar side driven in a rash and negligent manner at high speed and dashed his motor cycle from behind, due to which, the deceased fell down and sustained grievous injuries. Immediately, he was shifted to Kamineni Hospital, L.B.Nagar, where he underwent operations on 22.04.2009, 02.05.2009, 07.05.2009 and 15.05.2009. He was discharged on 16.05.2009. Subsequently, he took treatment in Woodlands Hospital and also in Care Hospital. While undergoing treatment, he died on 31.05.2009. Saroor Nagar

Police registered a case in crime No.448/2009 against the driver of the car for the offence punishable under Section 337 of Indian Penal Code and later altered to Section 304-A of Indian Penal Code. It was further stated that the deceased was aged 35 years, hale and healthy at the time of accident, carrying business in the name and style of 'Venkateswara Plastic Covers' and getting income of Rs.10,000/- per month. Thus, they claimed compensation of Rs.15,00,000/-.

The appellant-Insurance Company filed a counter affidavit denying the material averments of the claim petition and contending that the particulars of the accident were not informed to their office as required under Section 134 (c) of the Motor Vehicles Act. Hence, they are not liable to pay the compensation.

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

1) Whether the accident resulting in death of Nageshwar Rao.D. @ Nagesh occurred owing to the rash and negligent driving of the driver of car bearing No.AP 29-BC 0026?
2) Whether the petitioners are entitled for compensation and, if so, to what amount and from whom?
3) To what relief?

On behalf of the respondents-claimants, PWs 1 to 5 were examined and Exs.A.1 to A.34 and Ex.X.1 were got marked. On behalf of the appellant-Insurance Company, no witness was examined, however, Exs.B.1 and B.2 were got marked.

The Tribunal based on the evidence of PW.1-wife of the deceased, PW.2-eye witness to the accident and Exs.A.1, A.5 and A.6-FIR, charge sheet and additional charge sheet, held that the accident was occurred due to rash and negligent driving of the offending car by its driver.

As regards quantum of compensation, considering the fact that the deceased was an Income-Tax assessee and as per the income tax returns, he was doing business and getting income not less than Rs.6,000/-, the Tribunal has taken the monthly income of the deceased as Rs.6,000/- and Rs.72,000/- per annum. Since the dependants of the deceased are more in number, the Tribunal has deducted 1/4th of the income of the deceased towards his personal expenses and thereby arrived the contribution of the deceased to his family at Rs.54,000/- per annum. After applying the multiplier '15' as the deceased belong to the age group of 40 to 45 years, the loss of dependency was arrived at Rs.8,10,000/-. In addition, the Tribunal has granted Rs.3,30,000/- towards medical expenses incurred for the treatment of the deceased, Rs.2,000/- towards extra nourishment, Rs.1,000/- towards transportation charges, Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and Rs.5,000/- towards loss of consortium. Thus, in all, the Tribunal has granted the total compensation of Rs.11,58,000/-.

The learned counsel for the appellant-Insurance Company would contend that the Tribunal failed to see that there was contributory negligence on the part of the deceased in causing the accident. He would further contend that the compensation granted by the Tribunal is excessive.

Per contra, learned counsel for the claimants made his submissions to sustain the impugned award passed by the Tribunal.

As seen from the evidence available on record, P.W.1-wife of the deceased deposed the manner of accident. However, she is not an eye witness to the accident. But, P.W.2, who is the eye witness to the accident, was examined on behalf of the claimants. As per the evidence of P.W.2, on the date of accident at about 3.30 p.m. while he was waiting near APR Gardens at Champapet, the offending car came from Owaisi Hospital side driven in a rash and negligent manner at high speed, dashed against the motor cycle from its behind and caused the accident wherein the rider of the motor cycle received injuries. Thus, from the said evidence, it is clearly established that the accident was occurred due to the rash and negligent driving of the driver of the offending car. The plea of the counsel for the appellant is that the accident occurred due to the negligence on the part of the deceased, but no evidence was adduced in support of such plea. In the absence of any contrary evidence adduced, the finding of the Tribunal in this regard cannot be interfered with.

Even as regards quantum of compensation also, the Tribunal taking into consideration the income tax returns filed by the claimants, taken the income of the deceased as Rs.6,000/- per month. This Court finds no irregularity or illegality in the same. Further, the Tribunal has rightly deducted 1/4th of the income of the deceased towards personal expenses and applied the multiplier of '15' as per the ratio laid down by the Hon'ble Supreme Court in

Sarla Verma vs. Delhi Transport Corporation[1]. The Tribunal had rightly granted Rs.3,30,000/- towards medical expenses based on the evidence on record Exs.A.8 to A.14 and Ex.A.18 to A.25, nothing is elicited to disbelieve the said documents. The deceased died on 31.05.2009 after prolonged hospitalization and treatment from the date of accident taken place on 19.04.2009. Therefore, it could not be said that the grant of compensation is excessive. Hence, the compensation granted by the Tribunal cannot be said to be on higher side. I see no merits in the appeal.

Accordingly, the appeal is dismissed.

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

(M.GANGA RAO, J)

21.12.2018
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[1] 2009 (6) SCC 121