THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.4428 of 2008
and
I.A.No.2 of 2009
(Cross Objections No.5688 of 2009)

JUDGMENT:-

Challenging the Order, dated 30.06.2008, passed in O.P.No.2995 of 2004 by the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad, ('the Tribunal', for brevity), the United India Insurance Company Limited preferred M.A.C.M.A.No.4428 of 2008 seeking to set aside the impugned order and the claimants preferred I.A.No.2 of 2009 (Cross Objections No.5688 of 2009) seeking enhancement of compensation.

2. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties will be hereinafter referred to as per their array before the Tribunal.

3. The learned Standing Counsel for the appellant – insurance company would contend that lorry bearing No.API 2628 did not cause the accident. The Tribunal had granted excess compensation and ultimately prayed to set aside the impugned order.

4. On the other hand, the learned counsel for respondents/claimants would contend that there is specific evidence of P.W.2 to hold that the driver of the lorry bearing No.API 2628 drove it in a rash and negligent manner and caused the death of Balaraju (hereinafter referred to as 'the deceased').

P.W.2 was also cited as L.W.6-eye witness in the charge sheet filed by the police against the driver of the offending vehicle. The Tribunal after analysing the entire evidence hold that the lorry bearing No.API 2628 was driven by its driver in a rash and negligent manner and caused the death of the deceased. The findings are based on evidence available on record. There is nothing to take a different view.

5. Learned counsel for the claimants further contended that the Tribunal had granted compensation of Rs.6,56,200/- with interest @ 7.5% per annum. The deceased was aged 32 years but the Tribunal did not take the correct multiplier for the said age group. Further, the Tribunal did not take the monthly income of the deceased as per Ex.A6-salary certificate. Though the annual income of the deceased was Rs.75,000/-, the Tribunal had taken the monthly income of the deceased as Rs.5,000/- only. Further, the Tribunal did not add any future prospects of income. The Tribunal, while awarding the compensation, ought to have deduced 1/4th towards personal expenses of the deceased instead of deducting 1/3rd.

6. Learned counsel for the claimants relied upon the decision reported in *National Insurance Company Limited v. Pranay Sethi and others*[1] and contends that the Tribunal had not granted adequate compensation towards conventional heads and ultimately prayed to enhance the same.

7. In view of the submissions made by both sides, the following points arise for determination:-

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[1] 2017(6)ALD 170(SC)

1. Whether the death of Balaraju was caused due to the rash and negligent driving of the lorry bearing No.API 2628 by its driver?

2. Whether the impugned order is liable to be set aside as contended by the appellant-insurer or whether the claimants are entitled for enhancement of compensation, as the case may be?

8. POINT No.1:-

The specific contention of the appellant-insurer is that it is a case of hit and run. In the FIR, there is no mention of lorry number, which caused the accident. Though the alleged accident occurred on 05.10.2004, report was lodged on 06.10.2004. There is evidence of R.W.1, who is an employee of the insurance company. Through him Ex.B1-copy of insurance policy, Ex.B2-copy of certificate, Ex.B3-deposition of P.W.1 in C.C.No.772 of 2005, Ex.B4-deposition of P.W.2 in C.C.No.772 of 2005, Ex.B5-deposition of P.W.3 in C.C.No.772 of 2005, Ex.B6-deposition of P.W.4 in C.C.No.772 of 2005, Ex.B7-deposition of P.W.5 in C.C.No.772 of 2005, Ex.B8-deposition of P.W.6 in C.C.No.772 of 2005, Ex.B9-deposition of P.W.7 in C.C.No.772 of 2005, Ex.B10-deposition of P.W.8 in C.C.No.772 of 2005, Ex.B11-judgment in C.C.No.772 of 2005 were marked.

9. Admittedly, R.W.1 is not an eye witness to the accident. He deposed basing on the record. The exhibits marked under 'B' series do not reveal the number of the offending vehicle. Ex.B11 is the certified copy of the judgment relating to the subject criminal case, wherein the learned Magistrate recorded his findings as under:

> "So far the evidence on record failed to establish the accused dashed his lorry against the deceased. Prosecution miserably failed to prove the cause of the death of the deceased. The prosecution failed to prove the nexus between accused and crime vehicle, rash or negligence on the part of the accused and the identity of the accused. It is unsafe to convict the accused basing on the testimony of P.Ws.1 to 3, who are not the eyewitnesses to the case of the prosecution. The prosecution failed to prove the ingredients of offence under Section 304-A I.P.C."

There is no finding in the criminal case that the lorry bearing No.AP I 2628 caused the subject accident.

10. To prove the subject accident, P.W.2 was examined before the Tribunal. He deposed that Balaraju died due to rash and negligent driving of lorry bearing No.AP I 2628. In the cross-examination, he had given the number of the lorry, which caused the accident as 'AP I 2628'. P.W.2 was cited as eye witness in the charge sheet filed by the police in the said criminal case. Ex.A2 is the certified copy of charge sheet, which reveals that P.W.2 is an eye witness to the occurrence of accident. Under Ex.A2, there is mention that the subject accident and death were caused due to the rash and negligent driving of the driver of the lorry bearing No.AP I 2628. The Tribunal while dealing with these aspects relied on the decision of the Gujarat High Court in *Harishlal Chamanlal Panchal v. Dahiyabi Jayanthilal Panchal*[2]. Basing on the entire evidence, the Tribunal concluded that the subject death was caused by lorry bearing No.AP I 2628 driven by its driver in a rash and negligent manner on 05.10.2004. The finding of the Tribunal is supported by oral and documentary evidence. There is no iota

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[2] AIR 1999 GUJARATH 33

of evidence to hold that the lorry bearing No.API 2628 did not cause the accident. In view of the circumstances, it is not appropriate to take a different view. Therefore, it can safely be concluded that the subject accident was caused and the deceased died due to the rash and negligent driving of the driver of lorry bearing No.API 2628. Point No.1 is answered accordingly.

11. Point No.2:-

As per the evidence available on record, the age of the deceased was 32 years. There are five dependants of the deceased, who are claimant Nos.1 to 5 in the impugned O.P. i.e., his wife, children and mother. Ex.A6 is the income tax return of the financial year 2003-2004 filed by the deceased Balaraju during his life time i.e., on 20.08.2004. It shows the annual income of the deceased as Rs.75,000/-. The evidence available on record also discloses that the deceased was a sand supplier and his annual income was Rs.75,000/-. The claimants contended that the deceased was earning Rs.15,000/- per month, but there is no documentary evidence to prove the same. The Tribunal after analysing the entire documentary evidence, took the monthly income of the deceased as Rs.5,000/-, deducted 1/3rd towards his personal expenses, applied multiplier '15.53' and assessed the compensation payable towards loss of dependency at Rs.6,21,200/-. The Tribunal granted Rs.15,000/- towards loss of estate, Rs.15,000/- towards loss of consortium to the 1st claimant and Rs.5,000/- towards funeral expenses. In all, the Tribunal granted compensation of Rs.6,56,200/- to the claimants.

12. Relying on the decision reported in *National Insurance Company Limited* (1 supra), the learned counsel for the appellant would contend that as the deceased was aged 32 years and was a self employed person, 40% hike in his future earnings is required to be taken. As the deceased was a sand merchant and income tax returns were filed showing his annual income as Rs.75,000/-, future hike in his earnings is required to be taken.

13. As per the judgment of the Apex Court in *Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another*[3]*'s,* the suitable multiplier for the age of 32 is '16'. Since the dependants on the deceased are five in number, 1/4th has to be deducted from his salary towards his personal expenses.

14. In the instant case, the deceased was dealing in sand business and earning Rs.70,000/- annually. His income tax returns are filed showing the same. For sand business, one has to obtain permit/licence. The nature of business is not continuous business activity. It is only a seasonal business. Considering the totality of circumstances, the income of the deceased can safely be taken as Rs.6,000/- per month, which comes to Rs.72,000/- per annum. After deducting 1/4th towards the personal expenses of the deceased, the net contribution to his family comes to Rs.54,000/-. After applying the multiplier

[3] 2009 (6) SCC 121

'16', the loss of dependency comes to Rs.8,64,000/-. Therefore, the claimants are entitled to Rs.8,64,000/- towards loss of dependency. Further, as per the decision of the Apex Court in *National Insurance Company Limited* (1 supra), claimant No.1 is also entitled to Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The enhanced compensation of Rs.9,34,000/- (Rs.8,64,000/- + Rs.70,000/-) carries interest @ 7.5% per annum from the date of petition till the date of deposit.

15. In the result, the appeal filed by the insurance company is dismissed and the cross-objections (I.A.No.2 of 2009) filed by the claimants are partly allowed.

Miscellaneous petitions, if any, pending in both these appeals, stand closed. No order as to costs.

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Dr. SHAMEEM AKTHER, J

4th July, 2018
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