

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.721 of 2012

JUDGMENT:

The present appeal is preferred by the 2nd respondent – ICI Lombard General Insurance Company Ltd., in MV OP No.2048 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal cum III Additional Chief Judge, City Civil Court, Hyderabad, aggrieved by the order and decree dated 22.03.2011, granting compensation of Rs.11,19,496/- with interest at 7.5%p.a. from the date of petition, till the date of realization, for the death of the deceased – Durgala Rajalingam in a road accident.

2. The appellant herein is the 2nd respondent, the respondents 2 to 5 are the petitioners and the respondent No.6 is the 1st respondent - owner of the crime vehicle, in the original petition. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The facts in brief are that, the 1st petitioner is the wife and the petitioners 2 to 5 are the sons of the deceased Rajalingam, who was employed as Head Constable in Excise Department, Sangareddy and was drawing a salary of Rs.18,000/- per month; on 12.08.2009 at about 11.45 p.m. while the deceased was proceeding by walk near RTC bus stand, Patancheru, on the extreme left side of the road, suddenly one lorry bearing No.AP 16 T 1568, driven by its driver in a rash and negligent manner, came and dashed the deceased, due to which the deceased sustained grievous injuries and succumbed to death on the way to Gandhi Hospital; on a report given, police of Patancheru registered a case in Cr.No.358 of 2009 against the driver of the lorry for the offence

punishable under Section 304-A of IPC; therefore, the petitioners claimed an amount of Rs.12,00,000/- under various heads for the death of the deceased in the accident; the 1st respondent is the owner of the lorry and the 2nd respondent is the insurer and hence, both are jointly and severally liable to pay the compensation.

4. The 1st respondent remained *ex-parte* before the Tribunal. The 2nd respondent – insurer filed counter opposing the claim by raising various pleas, including the plea that the accident occurred due to the negligence of the deceased and that the compensation claimed by the petitioners is excessive.

5. Basing on the said pleadings, the Tribunal has framed three issues. During enquiry, on behalf of petitioners, PWs.1 to 3 were examined and Exs.A.1 to A.8 were got marked. On behalf of the 2nd respondent, no oral evidence was adduced, but Ex.B.1 policy copy was marked.

6. The Tribunal, on appraisal of evidence, basing on the evidence of PW.3 who is an eye witness to the accident, recorded a finding on issue No.1 that the accident occurred on account of the rash and negligent driving of the driver of the lorry; on issue No.2, the Tribunal held that the petitioners are entitled for a total compensation of Rs.11,19,496/- with interest at 7.5% per annum from the date of petition, till the date of realization; and on issue No.3, the Tribunal observed that the respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioners, as the vehicle of the 1st respondent was insured with the 2nd respondent and the insurance was in force on the date of accident. Aggrieved by the same, the present appeal is filed by the insurer.

7. Heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant and Sri A. Eshwar, learned counsel for the respondents 1 to 5. None appears for the 6th respondent, though notices served on him. Perused the record.

8. Learned counsel for the appellant mainly contended that the Tribunal followed the judgment of the Supreme Court in the case of '*Sarala Verma vs Delhi Corporation*¹', in all other aspects except in awarding interest, and that it should have awarded the interest at 6% per annum instead of 7.5% per annum. Learned counsel for the respondents-claimants, on the other hand, relying on the judgment of the Supreme Court in '*Jakir Hussein vs. Sabir*²' and '*Bithika Mazumdar vs Sagar Pal*³', contends that the Tribunal ought to have granted interest at 9% p.a. and as the claimants have not filed any appeal seeking enhancement of the interest, the interest awarded by the Tribunal at 7.5% per annum has to be confirmed.

9. Learned counsel for the appellant though urged in the grounds of appeal that the accident occurred due to the negligence of the deceased himself, but during the course of arguments, he has not seriously argued on that point. Further basing on the evidence of PW.3 an eye witness to the accident, coupled with Exs.A.1 and A.2 FIR and charge sheet, the Tribunal has rightly held that the accident occurred only due to the rash and negligent driving of the driver of the lorry.

10. With regard to awarding of compensation, the Tribunal, on appreciation of the entire material and evidence on record, i.e., evidence of PW.2, Assistant Commissioner of Police, Prohibition and

¹ 2009 ACJ 1298 = AIR 2009 SC 3104

² 2015(3) ALD 115 (SC)

³ 2017(3) ALD 35 (SC)

Excise, coupled with Ex.A.6 salary certificate, determined the gross salary of the deceased at Rs.17,998/- per month and net salary at Rs.15,243/- per month and after applying the relevant multiplier of '9' as per the decision of the Supreme Court in *Sarala Verma's* case (supra) (for a person aged 56 – 60 years), has rightly awarded a sum of Rs.10,97,496/- towards loss of earnings, apart from granting Rs.10,000/- towards loss of consortium to the 1st petitioner, Rs.2,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection to the petitioners 2 to 5, in all awarded a sum of Rs.11,19,496/-, with interest at 7.5% per annum from the date of petition, till the date of realization. Having regard to the oral evidence of PW.2 coupled with documentary evidence Ex.P.6 salary certificate of the deceased, this Court is of the view that the Tribunal has rightly determined the compensation under various heads by following the guidelines prescribed by the Supreme Court and needs no interference by this Court.

11. With regard to rate of interest awarded by the Tribunal, though, learned counsel for the appellant contended that the interest awarded by the Tribunal at 7.5% per annum is excessive, basing on the aforesaid judgments of the Supreme Court that the claimants in the accident cases are entitled for interest at 9% p.a., this Court is of the view that the interest awarded by the Tribunal at 7.5% p.a. is not excessive.

12. There is no dispute with regard to contractual obligation between the owner of the vehicle and the insurer. As per Ex.B.1 policy, as on the date of accident, the insurance policy was in force and hence, the Tribunal has rightly directed the respondents to pay the compensation jointly and severally.

13. For the reasons stated above, the appeal is devoid of merit and the same is accordingly dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Date: 14.09.2018
BSS

KONGARA VIJAYA LAKSHMI, J

