

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA. No.1126 of 2006

JUDGMENT:

This appeal is preferred by the claimants against the order dated 20.12.2005 passed in O.P. No.838 of 2004 by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge at Karimnagar.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the learned Tribunal in the original petition.

Brief facts of the case are that on 08.02.2004 the deceased Devaiah and one Velpula Srinivas were returning to Sircilla from Karimnagar, on a scooter bearing No.AP-15-D-693, after attending a function at Karimnagar. While so, at about 11.00 pm., when they reached Chandrampeta turning in front of Vijaya Laxmi Rice Mill, a lorry bearing No.APN-9014 was parked on middle of a road by its driver in negligent manner without parking lights or indicators or without any precautionary measures, thereby the deceased dashed the lorry from its back side as it is not visible during the night, as a result, the deceased and pillion rider both fell down and sustained injuries. Immediately, after the accident, the deceased was sifted to the Government Hospital, Sircilla and there he died while undergoing treatment.

The claim of the claimants is that due to the negligent parking of the lorry by the 1st respondent, the lorry belongs to the 2nd respondent and insured under the 3rd respondent, accident occurred and therefore, they filed the claim petition for Rs.4,00,000/- as compensation under various heads.

The respondents 1 and 2 filed their written statement denying the manner of accident and said that the lorry was parked in front of the Rice Mill on the extreme left side of road after switching on the parking lights. Therefore, the accident occurred due to the rash and negligent driving of the deceased.

The 3rd respondent, Insurance Company, also filed its written statement denying the petition averments and sought to dismiss the claim petition.

After considering the oral evidence of P.Ws.1 and 2 and the documentary evidence of Exs.A-1 to A-11 and R.W.1 and Ex.B-1, the learned Tribunal came to the conclusion that the claimants failed to establish that the accident was occurred due to the negligence parking of lorry by the 1st respondent and also held that the accident occurred due to the rash and negligent driving of the deceased only. Assailing the same, claimants filed the present appeal.

The learned counsel Sri T.Ramulu, appearing for the appellants, claimants, specifically drawn the attention of this Court to deposition of P.W.2 and Ex.A-10, certified copy of

Crime details form, in which it is categorically stated that the vehicle was parked on the road and the accident has occurred during the night on 08.02.2004 at about 11 pm. The deceased on scooter dashed the lorry, which was parked negligently without proper lights and without any precautionary measures by the driver of the lorry.

The learned standing counsel appearing for the Insurance Company submitted that the order passed by the learned Tribunal is well considered in all perspectives and needs no interference of this Court and this appeal is liable to be dismissed.

As could be seen from the impugned order, it is categorically deposed by the P.W.2 that the lorry was parked in the middle of a road, so the accident occurred because of parking of the vehicle on a road and the same is also coupled with Ex.A-10 wherein categorically mentioned that the lorry was parked on the road without any proper lighting. Hence, this Court is of the view that the driver of the lorry would have taken precautionary measures like putting on the parking lights while parking the lorry. If the lorry would have been parked in a specified parking places etc., the said accident could not have been occurred and nowhere it has been revealed that the lorry was parked in a specified parking place. Further, it is also to be noted here that the deceased could have also avoided the accident if he would be more cautious

while driving the vehicle. Hence, it can be concluded that the accident occurred due to negligent parking of the lorry by its driver and also without proper cautious driving by the deceased. Hence, there is contributory negligence on the either side. In that view of the matter, the contributory negligence is apportioned at 10% towards deceased and the 90% towards lorry driver. Since the lorry is insured with the 3rd respondent, Insurance Company, and the same is covered and the accident is occurred during the validity period of the policy, the liability shall be fastened against both the respondents jointly and severally i.e. respondents 2 and 3, owner of the lorry and the Insurance Company, respectively.

In view of the above, compensation has to be determined taking into consideration the submissions made by the learned counsel for the appellants, claimants, and also well settled principles established by the Apex Court.

With regard to the computation of the amount is concerned, age of the deceased is considered as 41 years and was doing vegetable wholesale business. The claim of the claimants is that the deceased was earning Rs.5,000/- but in the absence of any proof of income of the deceased, taking into consideration the judgment of the Apex Court in **RAMACHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED**¹ income of the deceased is fixed at Rs.4,500/-. The claimants are also

¹ (2011) 13 Supreme Court Cases 236

entitled to addition of 25% on the income of the deceased towards future prospects as per the ratio laid down by the Apex Court in **NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS**² and also entitled to Rs.70,000/- under the conventional heads. So, $4,500 \times 25\% = 5625/-$. Dependants being nine in number, $1/5^{\text{th}}$ has to be deducted towards personal expenses of the deceased. After deducting $1/5^{\text{th}}$ from Rs.4,500/- ($5625 - 1125$) and annual loss would be Rs.54,000/- ($4,500 \times 12$) and appropriate multiplier would be 14 as per the judgment of the Apex Court in **SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER**³. Hence, the total loss of future income comes to Rs.7,56,000/-. Apart from the above, following the ruling of Apex Court in **MAGMA GENERAL INSURANCE CO. LTD. Vs. NANU RAM ALIAS CHUHRU RAM & OTHERS**⁴ claimant Nos.2 to 7 are the minor children of the deceased, they are entitled to Rs.50,000/- each towards loss of love and affection and the claimant Nos.8 and 9 are the parents of the deceased are entitled to Rs.40,000/- each under the head of loss of filial consortium. Total compensation would come to Rs.12,06,000/-.

Now contributory negligence has to be apportioned at 10% towards deceased and 90% towards respondents, which comes to Rs.1,20,600/- and Rs.10,85,400/-, respectively.

² MANU/SC/1366/2017

³ (2009) 6 Supreme Court Cases 121

⁴ 2018 Law Suit (SC) 904

Since the owner and insurer of the scooter, which was driven by the deceased, are not impleaded as parties to the proceedings it is not possible to award the compensation against it. Hence, Rs.10,85,400/- is awarded to the claimants towards compensation with proportionate costs and interest, which is to be payable by the 2nd respondent, owner of the lorry, and the 3rd respondent, insurer of the lorry, jointly and severally, within a period of two months from the date of receipt of a copy of this order. The awarded compensation shall carry interest at the rate of 7.5% from the date of application till its realization.

Since the claim of the claimants is only Rs.4,00,000/- and the awarded amount is more than that of the claim, the claimants shall pay the deficit Court fee and on such payment, the claimants are permitted to withdraw the said compensation.

Accordingly, this appeal is allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 26.11.2019
LSK