HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.2890 of 2014

JUDGMENT :

Feeling aggrieved by the judgment and decree dt.10.05.2013 in O.P.No.1456 of 2008 passed by the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad ("Tribunal"), respondent No.2 – M/s. Bajaj Allianz General Insurance Company Limited, has preferred the present appeal challenging the quantum of compensation awarded by the Tribunal.

By the aforesaid judgment, the Tribunal has awarded a sum of Rs.14,00,000/- towards compensation with future interest @ 7.5% per annum from the date of the petition till the date of deposit, as against the claim of Rs.20,00,000/- laid by the claimants, the wife, three minor children, mother and unmarried sister of the deceased.

On an analysis of the entire evidence on record, the Tribunal gave a specific finding that the accident took place due to the rash and negligent driving by the driver of the offending Car bearing No.AP 28VA 0544. Now, the present appeal is filed claiming contributory negligence on the part of the deceased.

Learned counsel for the appellant – Insurance Company would contend that on 19.08.2008, the deceased was proceeding on his motor cycle bearing No.AP 12G 3892 at about 10.45 hours while he was crossing the road in front of Sundar Steel, Sathamrai on National Highway No.7 and at that time, the driver of Car bearing No.AP 28VA 0544 drove it in a rash and negligent manner without following the Traffic Rules and dashed against the deceased. Learned counsel for the appellant – Insurance Company would contend that the car was proceeding on a straight road, whereas the deceased was proceeding on the motor cycle and trying to cross the road from one side to the other through the gap in between the road and the divider. Therefore, there is negligence on the part of the deceased also. At the time of accident, the deceased was on motor cycle and trying to cross the road through the gap in between the road and divider. The car, which was coming in the straight direction, dashed against the deceased.

Learned counsel for the appellant – Insurance Company would contend that the Tribunal did not consider the said aspect of contributory negligence on the part of the deceased and awarded Rs.14,00,000/- towards compensation by fixing the liability jointly and severally on the appellant – Insurance Company and respondent No.1 – owner of the offending vehicle.

On the other hand, learned counsel for the respondents/claimants would submit that there is no pleading by the appellant – Insurance Company before the Tribunal with regard to the contributory negligence on the part of the deceased and there is no evidence to prove the same and in the absence of any proof, the Tribunal rightly awarded compensation and fixed the liability jointly and severally on respondent No.1 – owner of the offending vehicle and respondent No.2 – Insurance Company therein.

Admittedly, as contended by the learned counsel for the respondents/claimants, a perusal of the entire evidence shows that there is no whisper or pleading by the appellant – Insurance Company before the Tribunal with regard to contributory negligence on the part of the deceased nor there is any evidence in that regard. The only contention raised by the appellant - Insurance Company before the Tribunal was that the deceased was not having a valid driving licence at the time of accident and the claim laid by the respondents/claimants is exorbitant.

In support of its contention, the appellant – Insurance Company examined RW.1 – Owner of the Car, RW.2 – Senior Executive (Legal) in the Insurance Company, and RW.3 – Senior Assistant in the office of RTA, Nalgonda.

On the other hand, the respondents/claimants examined the wife of the deceased as PW.1, an eye witness to the incident as PW.2, and Inspector, Income Tax Department as PW.3.

The Tribunal, after considering the entire evidence, both oral and documentary, gave a categorical finding that the Insurance Company and the owner of the offending vehicle are liable to pay compensation.

Further, there is no pleading with regard to contributory negligence and RW.1 – owner of the offending vehicle did not speak anything about the contributory negligence on the part of the deceased. RW.1 – owner of the offending vehicle deposed that the driver – Srinivas Naik was possessing valid driving licence to drive the vehicle and the car involved in the accident was a motor car, which was being used as a taxi for carrying the passengers and that Ex.B.1 – Policy covers the crime vehicle and the same is valid. Thus, RW.1 did not speak about the contributory negligence on the part of the deceased at all.

At the cost of repetition, as discussed supra, there is no pleading or averment by the appellant - Insurance Company with regard to contributory negligence on the part of the deceased, nor there is any oral or documentary evidence in proof of the same. On the other hand, the respondents/ claimants have examined PW.1 – wife of the deceased and PW.2 – an eye witness to the accident. The depositions of PWs.1 and 2 and also Exs.A.1 and A.2, certified copy of FIR

No.303/2008 and the certified copy of charge sheet therein, respectively, would show that the accident occurred due to the rash and negligent driving on the part of driver of the car. Therefore, the contention of the learned counsel for the appellant – Insurance Company that there is contributory negligence on the part of the deceased has no basis and the same cannot be accepted.

Now, coming to the quantum of compensation being awarded to the respondent – claimants, it is the specific contention of the respondents – claimants that the deceased was aged about 39 years. However, in the claim petition, the appellants - claimants have mentioned the age of the deceased as 42 years. However, to prove the age of the deceased, the respondents - claimants filed Ex.A.8 – Xerox copy of PAN Card of the deceased; Ex.B.2 - Original Driving Licence of the deceased dt.07.12.2006, wherein the date of birth of the deceased is mentioned as 01.06.1969. Admittedly, the appellant – Insurance Company failed to disprove the same and they have not produced any oral or documentary evidence to disprove the same. Therefore, in the absence of any contrary evidence, the age of the deceased as mentioned in Ex.A.8 – PAN Card and Ex.B.2 – Driving Licence of the deceased as 39 years old can be believed.

Thus, the Tribunal has rightly considered the age of the deceased as 39 years and as per the principle laid down in

SARLA VERMA v. DELHI TRANSPORT CORPORATION[1], the appropriate multiplier '15' should be applied.

With regard to monthly earnings capacity of the deceased, it is the specific contention of the respondents - claimants that the deceased used to do transport business and used to earn more than Rs.10,000/- per moth as on the date of accident and in proof of the same, the wife of the deceased was examined as PW.1 and Inspector of Income Tax Department as PW.3. PWs.1 and 3 also filed Exs.A.5 to A.7, which are copies of Income Tax Returns for the years 2005-06, 2006-07 and 2008-09, respectively, and Ex.A.8 copy of PAN Card of the deceased. The respondents - claimants also filed Ex.A.9 – copy of Registration Certificate of the deceased Company under Section 69 of the Finance Act, 1994. Placing reliance on the said documents and also the depositions of PWs.1 to 3, the Tribunal rightly considered the age and earning capacity of the deceased as Rs.10,000/- per month and this Court is satisfied with the said finding recorded by the Tribunal.

Therefore, the Tribunal has rightly awarded compensation of Rs.14,00,000/- to the respondents – claimants with interest @ 7.5% per annum and the same does not warrant any interference by this Court. Further, the Tribunal has rightly fixed the liability jointly and severally,

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[1] 2009 ACJ, page 1298

both on the owner of the offending vehicle and the Insurance Company. Thus, the appellant – Insurance Company fails to make out a case or reason warranting interference by this Court.

For the aforesaid reasons, the appeal fails and it is accordingly dismissed. No order as to costs.

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

JUSTICE K. LAKSHMAN

13.03.2020.
Msr

HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.2890 of 2014

13.03.2020
(Msr)