

THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.MA. No.245 of 2020

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is filed by the insurance company, aggrieved by the Order and Decree passed in MVOP No.640 of 2015, dated 01.10.2019 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Sessions Judge for fast tracking the case relating to atrocities against the women - cum- VIII Additional District Judge, Khammam, (for short "the Tribunal"), wherein the Tribunal had awarded a compensation of Rs.9,01,400/- as against the claim of Rs.10,00,000/- on account of the death of Rasuri Yakaiah in a motor vehicle accident that occurred on 26-11-2007.

2. The case of the respondent/petitioner in brief:

On 26.11.2007 the deceased was proceeding on tractor and trailer bearing no. AP36 TTR 5593 and AP 36 TTR 5781 with a load of paddy bags towards Kothagudem village to Masampalli village. When the tractor reached

Thativari Vempally village at about 10.00 PM, the 1st respondent driver driven the tractor in a rash and negligent manner due to which the tractor turned turtle causing the paddy bags fell on the deceased and he died on the spot.

3. It is pleaded that at the time of accident the deceased was aged 25 years and earning Rs.400/- per day. He used to contribute his earnings for the maintenance of family. It is further pleaded that due to sudden death of the deceased, the petitioners lost love and affection of the deceased and their future became destitute. The first respondent/claimant lost her conjugal happiness. The respondents are dependent upon the earnings of the deceased and lost their earning member.

4. The respondent No.3 filed counter before the Tribunal denying the manner of accident as narrated by the petitioners and further denied that the accident was occurred due to driver of tractor. It is pleaded that the driver of tractor was holding valid licence No.8534/WGL99 dated 08-09-1999 which was valid from 08-09-1999 to 07-

09-2019. The vehicle was insured with the policy cover note No.35142310 with effect from 12-11-2007 to 11-11-2008 with package policy including six coolies and he has paid Rs.7,976/-.

5. The Appellant/insurance company filed its counter denying the manner of accident, denied about the age, avocation and income of the petitioner. It is further denied that the 1st respondent was holding valid transport endorsement driving licence and the vehicle was road worthy to ply. It is pleaded that the deceased was travelling as an unauthorized passenger in goods transport at the relevant time of accident.

6. Basing on the above pleadings the following issues were framed by the Tribunal:

1. Whether the accident took place on 26-11-2007 due to rash and negligent driving of the driver of the Tractor-Trailer bearing No.AP 36TT R 5593 and AP 36TT R 5781, by its driver?

2. Whether the petitioners are entitled to claim compensation on account of death of deceased (Rasuri Yakaiah) as prayed for or not? If so, to what amount and from which of the respondents?

3. To what relief?

7. During the course of the trial, on behalf of the claimants/petitioners, 1st petitioner was examined as PW1 and Ex.A1 was marked. On behalf of the 1st respondent no witnesses were examined and no documents were marked. On behalf of the appellant, RW1 was examined and B-1 to B-3 were marked.

8. On considering the evidence and material on record the Tribunal was pleased to award compensation of Rs.9,01,400/- with proportionate costs and interest at 7.5% per annum from the date of filing of the petition till the date of deposit of the amount against the respondents as stated below:

1.	Loss of Dependency	Rs.8,06,400/-
2.	Loss of Consortium to the 1 st petitioner (wife)	Rs.40,000/-
3.	Loss of love and affection to the 2 nd petitioner (minor daughter)	Rs.25,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral Expenses	Rs.15,000/-
	Total	Rs.9,01,400/-

9. Heard both sides and perused the record.

10. The appellant contends that the Tribunal erred in holding that the accident was occurred due to rash and negligent driving of the driver-cum-owner of crime vehicle Tractor/Trailer bearing No.AP 36 TTR 5593 and AP 36 TTR 5781 only. It is further contended that the Tribunal failed to consider that the claim petitioners did not file any documents to prove the alleged accident. It is further

contended that the driver of the crime vehicle did not possess valid driving license.

11. The appellant further contended that the Tribunal failed to consider that the deceased was proceeding on the top of the trailer as a gratuitous passenger and there is no record to prove that the deceased was engaged by insured as coolie on his tractor. It is further contended that the Tribunal erred in taking the income of the deceased as Rs.4,000/- per month and added 40% towards future prospects of the deceased for the age of 25 years.

12. In contra, the respondent contends that the Tribunal had rightly passed an award on the basis of evidence and material on record. It is further contended that there is no error in the order of the Tribunal and requested to dismiss the appeal.

13. This Court has taken note of the above submissions made by the respective parties.

14. To prove the rash and negligent driving of the driver of the tractor the first petitioner/claimant who is the wife of the deceased was examined as PW1 she deposed that the deceased was proceeding on tractor and trailer bearing No. AP 36 TTR 5593 and AP 36 TTR 5781 with a load of paddy bags towards Kothagudem village to Masampalli village. When the said tractor reached Thativari Vempally village at about 10.00 pm, the 1st respondent driver driven the tractor in rash and negligent manner and lost control over the steering and turned turtle, due to which the paddy bags were fallen on him and he died on the spot.

15. The appellant insurance company did not choose to examine any other independent witness so as to show that there was no rash and negligence on the part of driver of the crime vehicle Tractor/Trailer. The record reveals that the fact of accident and death of the deceased in the said accident are not in dispute. Hence this court holds that the Tribunal had justified in holding that the death was occurred on account of rash and negligent act on the part

of the driver of crime vehicle tractor and trailor bearing No. AP 36 TTR 5593 and AP 36 TTR 5781.

16. Ex.B1 is the copy of the policy reveals that the policy was valid from 12.11.2007 to 11.11.2008 and it was in force as on the date of accident. Ex.A1 is the license valid from 08.09.1999 to 17.12.2010 in respect of tractor/trailer non transport, issued on 08.09.1999 and in respect of tractor/trailer transport, issued on 11.02.2002 and as on the date of accident, the 1st respondent was holding valid licence to drive the crime vehicle which is a tractor-LMV non-transport as per Ex.B3. Record reveals that there is no acceptable evidence to show that the deceased was an unauthorised passenger as claimed by the 2nd respondent.

17. The Tribunal on considering the undisputed material on record had taken the age of the deceased as 25 years as on the date of the accident. As per the evidence of PW1 the deceased was earning Rs.400/- per day. As held by the Hon'ble Apex Court in Ramchandruppa's case, the Tribunal had justified in taking the income of the deceased as

Rs.4,000/- per month for the purpose of calculation of future prospects. Further the Tribunal had justified in awarding Rs.8,06,400/- compensation under loss of dependency, Rs.40,000/- towards loss of consortium to the 1st petitioner, Rs.25,000/- towards loss of love and affection to the 2nd petitioner, Rs.15,000/- towards loss of estate, Rs.15,000/- funeral expenses.

18. In view of the above, this Court does not find any error in the order of the Tribunal. Hence the appeal is liable to be dismissed.

19. Accordingly, the Motor Accidents Civil Miscellaneous Appeal is dismissed. There is no order as to costs.

Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

JUSTICE PULLA KARTHIK

Date: 16.09.2022
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