

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 3432 of 2014

JUDGMENT:

This appeal is preferred by the Reliance General Insurance Company Limited, questioning the award and decree, dated 31.10.2013 passed in O.P.No. 12 of 2011 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-IV Additional District Judge, R.R. District (for short, the Tribunal).

For the sake of convenience, hereinafter, the parties are referred to as per their array before the tribunal.

The claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.9,00,000/- for the death of the deceased, Telu Srinivas, who died in a motor vehicle accident that occurred on 29.01.2010. According to the claimants, in connection with his cloth merchant business, after attending the works at Kakinada, while the deceased was returning to Hyderabad, on 29.01.2010, at 3:00 p.m., when the car reached Argalanu turning point on N.H. No. 5 within the limits of P.S. Pentapadu, the offending vehicle i.e., lorry bearing No. AP 37X 4788, owned by respondent No. 1, insured with respondent No. 2, being driven by its driver in a rash and

negligent manner, dashed the Scarpio car. As a result, the deceased sustained grievous injuries and died on the spot. According to the claimants, the deceased was earning Rs.15,000/- per month by doing cloth merchant business, aged about 45 years, and therefore, they laid the claim for Rs.9.00 lakhs against the respondents towards compensation under different heads.

Before the Tribunal, while the respondent No. 1, owner of the lorry stood ex parte, the respondent No. 2 contested the claim denying the averments of the claim petition, including the age, avocation and income of the deceased and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

After considering the claim, counter and the evidence, both oral and documentary brought on record, the tribunal has allowed the O.P. in part awarding a sum of Rs.8,62,000/- towards compensation with interest at 7.5% thereon to be paid by the respondents jointly and severally. Hence, the insurance company filed the present appeal challenging the quantum of compensation.

Heard both sides and perused the record.

Learned Standing Counsel for the appellant-Insurance Company contends *inter alia* that the tribunal did not consider the evidence brought on record in proper perspective and erroneously held that the accident had occurred due to the rash and negligent driving of the driver of the bus. In fact, it is a head-on collision and the accident took place due to the contributory negligence of the drivers of both the vehicles and therefore, the tribunal ought to have apportioned contributory negligence on both the drivers. As regards the quantum of compensation, it is contended that although there is no mention of the name of the deceased as owner of the garments, the tribunal erred in relying upon the registration certificate, Ex.A.6 for the purpose of determining the compensation. Although there was no documentary evidence to prove the monthly income of the deceased, the tribunal has erroneously fixed the monthly income of the deceased at Rs.7,500/-.

On the other hand, the learned counsel appearing on behalf of the claimants-respondents, has contended that the compensation amount granted by the learned Tribunal,

considering the avocation and age of the deceased, is reasonable and needs no interference by this Court. Even on the point of contributory negligence, it is contended that the tribunal duly considering the documentary evidence i.e., Exs.A.1 & A.2 and P.W.2, the eyewitness to the accident, categorically held that the accident had occurred only due to the rash and negligent driving of the offending vehicle by its driver and therefore, the said findings need no interference by this Court. Hence, the learned counsel prayed for dismissal of the appeal.

In this appeal, it is the main contention of the learned Standing Counsel for the appellant-Insurance Company that the accident occurred due to the contributory negligence on the part of both the drivers of the vehicles involved in the accident and therefore, the tribunal ought to have apportioned contributory negligence on both the drivers. As seen from the record, Ex.A.1, FIR, was registered against the driver of the crime vehicle basing on the complaint given by V.R.O. of Prathipadu Village. As per the contents of complaint, the cause of accident was the sudden turning of the lorry by its driver. Further, after due investigation into the crime, police laid the charge sheet against the driver of the offending lorry stating that the accident

occurred due to the rash and negligent driving of the offending vehicle and the driver was charged for the offence under Sections 304-A, 337 and 338 IPC. That apart, P.W.2, the eyewitness to the accident, clearly stated that the accident occurred only due to the rash and negligent driving of the lorry by its driver. The Insurance Company did not take any steps to summon the driver of the offending lorry to prove that there was contributory negligence on the part of both the drivers, who is the best person to speak in this regard. Further, no contra evidence was elicited in the cross-examination of P.W. 2, eyewitness to the accident. Therefore, considering the evidence of P.W.2 and Exs.A.1 & 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 lorry by its driver, which needs no interference by this Court.

As regards the quantum of compensation, although the claimants claimed that the deceased was doing cloth merchant business and earning Rs. 15,000/- per month, as there was no supportive evidence was adduced by the claimants, the tribunal has rightly assessed the monthly income of the deceased at Rs.7,500/-, based on Ex.A.6, TOT Registration Certificate, after

deducting 1/3rd therefrom towards personal expenses and duly applying multiplier '14' considering the age of the deceased as 45 years, and by awarding conventional heads, the tribunal has awarded the compensation to the claimants. In fact, the tribunal ought to have deducted 1/4th towards personal expenses as there are four dependents. In these circumstances, this Court is of the view that the compensation awarded by the Tribunal cannot be said to be adequate. Therefore, I see no reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

Accordingly, the M.A.C.M.A. is dismissed confirming the award and decree passed by the Tribunal. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

05.12.2022
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DATE:05-12-2022