

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

M.A.C.M.A.No.2875 of 2016

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant-Reliance General Insurance Company Limited, challenging the order, dated 27.08.2016, passed in MVOP No.258 of 2015 by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge at Karimnagar (for short, 'the Tribunal').

2. We have heard the submissions of Sri T.Mahender Rao, learned Standing Counsel for the appellant-Insurance Company, Sri Rama Chandar Rao Vemuganti, learned counsel for the respondent Nos.1 to 3/claimants and perused the record.

3. Learned Standing Counsel for the appellant-Insurance Company would contend that the deceased Arram @ Yeeram @ Erram Rami Reddy @ Ram Reddy died in a motor accident that occurred on 03.09.2014 due to his own rash and negligent driving of the motorcycle bearing registration No.AP-15-S-8914, but not due to the rash and negligent driving of the driver of Swaraz

Mazda van bearing registration No.AP-15-X-5235. Though the driver of the Swaraz Mazda van bearing registration No.AP-15-X-5235 pleaded the same before the Tribunal by filing counter, the Tribunal erroneously held that the subject accident occurred due to rash and negligent driving of the driver of Swaraz Mazda van bearing registration No.AP-15-X-5235. Such a finding by the Tribunal is unsustainable under law. The Tribunal at least ought to have held that the subject accident occurred due to contributory negligence of the deceased who was driving the motorcycle. Further, the Tribunal erred in taking the gross annual income of the deceased as Rs.7,00,194/- relying on income tax returns under Exs.A7, A12, X2 and X3 and further adding 15% towards future prospects. The Tribunal failed to see that the land owned by the deceased will be inherited by the claimants and therefore, the normal rule of deprivation of income is not applicable in the cases of agriculturists. Further, the claimants would continue to get the income from the rice mill business of the deceased, since there is no evidence with regard to loss sustained by them after the death of the deceased. Further, the wife of the deceased who deposed as PW.1 admitted in her evidence that the deceased was a white ration card holder and that his income was Rs.16,000/- per annum. Further, the compensation of Rs.2,00,000/- awarded by

the Tribunal towards 'love and affection' is exorbitant, so also Rs.2,00,000/- awarded under the head 'loss of estate'. It is also contended that the Tribunal ought to have taken the average income of the deceased for the assessment years 2011-12 to 2013-2014, but not the income of the deceased for the assessment year 2013-2014 and ultimately prayed to reduce the compensation awarded by the Tribunal by taking the above submissions into consideration.

4. On the other hand, the learned counsel for the respondent Nos.1 to 3/claimants would contend that there is specific evidence of PW.2/eye witness to the subject accident that the subject accident took place due to the rash and negligent driving of the driver of the Swaraz Mazda Van bearing registration No.AP-15-X-5235. The criminal case records pertaining to the subject accident under Ex.A1-certified copy of FIR and Ex.A2-certified copy of charge sheet substantiates the same. Therefore, the Tribunal is justified in holding that there was no contributory negligence on the part of the deceased in the occurrence of the subject accident. The deceased was an agriculturist and partner in a rice mill. He owned agricultural lands and was raising commercial crops therein. The deceased was having two PAN cards, one in the name of the

individual and the other in the name of HUF. The Tribunal rightly took into consideration Ex.X2 and X3-income tax returns for the assessment year 2013-2014 under the individual and under HUF and rightly assessed the gross income of the deceased as Rs.7,00,194/-. Further, the Tribunal rightly added 15% towards future prospects and rightly assessed the annual income of the deceased as Rs.7,53,498/-. Further, the Tribunal rightly took the age of the deceased as 57 years 08 months 26 days, rightly applied the multiplier '9' to the age of the deceased and justified in granting a total compensation of Rs.50,55,988/- with interest @ 7.5% per annum from the date of petition till the date of realisation, by taking all the relevant factors into consideration. There are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. In view of the above submissions, the points that arise for determination in this appeal are as follows:

- 1) *Whether the deceased died in the subject accident occurred on 03.09.2014 at Sulthanpur Cross Road due to the rash and negligent driving of the driver of the Swaraz Mazda Van bearing registration No.AP-15-X-5235? (or) Whether the deceased drove the vehicle, i.e., Hero Honda Passion Plus motorcycle bearing registration No.AP-15-S-8914 in a rash and negligent manner and was himself responsible for his death? (or) whether there was contributory*

negligence on the part of the driver of the Swaraz Mazda van bearing registration No.AP-15-X-5235 as well as the deceased in the occurrence of the subject accident?

- 2) Whether the Tribunal is justified in taking the gross annual income of the deceased as Rs.7,00,194/-?*
- 3) Whether the Tribunal is justified in taking 15% of the gross annual income towards increase in income for future prospects?*
- 4) Whether the Tribunal is justified in granting a total compensation of Rs.50,55,988/- to the respondent Nos.1 to 3/claimants?*
- 5) Whether the impugned order, dated 27.08.2016, passed in MVOP No.258 of 2015 by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge at Karimnagar, is liable to be set aside or modified?*

POINTS:-

6. The material placed on record reveals that on 03.09.2014 at about 07:30 AM, the deceased left his house at Aitharajpalli Village to go to his agricultural fields on his Hero Honda Passion Plus Motorcycle bearing registration No.AP-15-S-8914 and when he reached Sulthanpur Cross Road and while crossing the road, one Swaraz Mazda Van/Bus bearing registration No.AP-15-X-5235 came with high speed in rash and negligent manner from opposite direction and dashed against the motorcycle as a result of which, the deceased died on the spot.

7. Before the Tribunal, the claimant No.1/wife of the deceased was examined as PW.1, an eye witness to the subject accident was examined as PW.2 and an Income Tax Inspector was examined as PW.3 and Exs.A1 to A12 were marked. On behalf of the respondents, RW.1 and RW.2 were examined and Ex.B1 was marked. Exs.X1 to X3 were marked through PW.3.

8. Ex.A1 is the certified copy of the FIR. Ex.A2 is the certified copy of charge sheet. Ex.A3 is the certified copy of Inquest Report. Ex.A4 is the certified copy of PME Report. Ex.A5 is the certified copy of MVI Report. Ex.A6 is certified copy of Form 54. Ex.A7 is the attested online copy of individual income tax return for the year 2011-12 vide Pan Card No.AFUPA 4829E obtained from the Income Tax Office, Karimnagar. Ex.A8 is the attested online copy of individual income tax return for the year 2012-13 vide Pan Card No.AFUPA 4829E obtained from Income Tax Office, Karimnagar. Ex.A9 is the attested online copy of individual Income Tax Return for the year 2013-13 vide Pan Card No.AFUPA 4829E obtained from the income tax office Karimnagar. Ex.A10 is the attested online copy of individual Income Tax Return for the year 2011-12 vide Pan Card No.AAFHA7710J obtained from the income tax office, karimnagar. Ex.A11 is the attested online copy of

individual income tax return for the year 2012-13 vide Pan Card No.AAFHA7710J obtained from the income tax office, Karimnagar. Ex.A12 is the attested online copy of individual income tax return for the year 2013-14 vide Pan Card No.AAFHA7710J obtained from the income tax office, Karimnagar. Ex.B1 is the true copy of policy. Ex.X1 is the authorization letter. Ex.X2 is the Income Tax Returns of A.Ram Reddy for the year 2011-12 to 2013-14 (individual PAN No.AFUPA4829E) Ex.X3 is the Income Tax Returns of A.Ram Reddy for the year 2011-12 to 2013-14 (HUF) with PAN No.AAFHA7710J.

9. P.W.1 reiterated all the facts in the claim petition in her chief affidavit. She denied the negligence on the part of the deceased in the occurrence of the subject accident. In the criminal case record pertaining to the subject accident, i.e., Ex.A1-certified copy of FIR, Ex.A2-certified copy of Charge Sheet, the name of driver of Swaraz Mazda Van/Bus bearing registration No.AP-15-X-5235 was shown as accused. Ex.A.2-charge sheet was filed after due investigation. Further, Ex.A5-certified copy of MVI Report discloses that there was no mechanical defect in the subject Swaraz Mazda Van/Bus bearing registration No.AP-15-X-5235. Apart from the evidence of PW.1 and the criminal case record pertaining to the subject accident, PW.2, who is said to be an eye witness, was examined.

As per the chief affidavit of PW.2, on 03.09.2014, he went to Sulthanpur village and while he was returning to his village, when he reached at the outskirts of Aitharajpalli village, near Sulthanpur Cross Road, at about 07.30 AM, the offending Swaraz Mazda Van/Bus was proceeding ahead of him in rash and negligent manner and dashed the deceased from opposite direction, which resulted in spontaneous death of deceased. It is further deposed that the subject accident was caused due to rash and negligent driving of the driver of offending Swaraj Mazda Van/Bus and they informed about the death of deceased to his family members. In the cross examination, PW.2 denied that there was negligence of deceased in occurrence of the subject accident as he suddenly crossed the road. On behalf of the respondents, the driver of the offending Swaraz Mazda Van/Bus bearing registration No.AP-15-X-5235 was examined as RW.1. He is an interested witness. Certainly he would try to save himself. The appellant/Insurance Company did not choose to examine any independent witness to prove that the deceased was responsible for the subject accident or that there was contributory negligence in the occurrence of the subject accident. In view of the same, it can be safely concluded that the subject accident occurred due to rash and negligent

driving of the driver of the Swaraz Mazda Van/Bus bearing registration No.AP-15-X-5235.

10. As far as the quantum of compensation granted by the Tribunal is concerned, the deceased claimed to be agriculturist and partner in M/s.Venkata Sai Ram Industries Parboiled Rice Milling, Durshed, and earning Rs.60,000/- per month. To prove the same, the claimants adduced the evidence of PW.3. As per evidence of PW.3, he was working as Income Tax Inspector, Ward IV, Karimnagar, and he was authorized to give evidence vide Ex.X.1- Authorization letter. He deposed that he brought income Tax returns of deceased who was having two PAN Cards, one in the name of individual and another in the name of his HUF. Ex.X2 is the income tax returns of the deceased as individual for three years, i.e., from 2011-12 to 2013-2014. Ex.X3 is the income tax returns of deceased as HUF for three years, i.e., from 2011-2012 to 2013-2014. As per Ex.X2, the individual income of the deceased for the assessment year 2011-2012 was Rs.1,58,023/-, for the assessment year 2012-2013 it was Rs.2,38,752/- and for the assessment year 2013-2014 it was Rs.2,77,954/-. He further deposed that as per Ex.X.3 the HUF income of the deceased for the year 2011-2012 was Rs.1,51,000/-, for the assessment year 2012-

2013 was Rs.2,26,316/- and for the assessment year 2013-2014 was Rs.2,22,067/-. He further deposed that Ex.A.7 to 12 are the attested online copies of income tax returns. Nothing was elicited in the cross examination of PW.3 to discredit his testimony.

11. Learned Standing Counsel for the appellant/Insurance Company, relying on two judgments of the Hon'ble Apex Court in **State of Haryana and another Vs. Jasbir Kaur and others**¹ and **New India Assurance Company Limited Vs. Yogesh Devi and others**², would submit that the Tribunal failed to see that the land owned by the deceased will be inherited by the claimants and therefore, the normal rule of deprivation of income is not applicable in the cases of agriculturists. Further, the claimants would continue to get the income from the rice mill business of the deceased, since there is no evidence with regard to loss sustained by them after the death of the deceased. We find force in the said submission of the learned Standing Counsel. In **Jasbir Kaur's** case (2 supra), the Hon'ble Apex Court held as follows:

"The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to the cases where agricultural income is the source."

¹ 2003 ACJ 1800

² 2012 Law Suit (SC) 100

12. In **Yogesh Devi's** case (1 supra), the Hon'ble Apex Court held as follows:

“Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the abovementioned three mini-buses. The High Court rejected the claim insofar as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the abovementioned three buses. The asset (three mini-buses) would still continue with the family and fetch income.”

13. In the instant case, as regards the individual income of the deceased, Ex.X2 is the income tax returns of the deceased for the year 2011-12 to 2013-14 with PAN No.AFUPA4829E. As per the evidence of PW.3, which is in consonance with Ex.X2, the annual income of the deceased for the Assessment year 2011-2012 is Rs.1,58,023/-; the annual income of the deceased for the Assessment Year 2012-2013 is Rs.2,38,752/-; and the annual income of the deceased for the Assessment Year 2013-2014 is Rs.2,77,954/-. The deceased was a business man. It is common knowledge that there would be ups and downs in business. Therefore, this Court deems it appropriate to take the average income of the three assessment years as the gross annual income of the deceased in his individual capacity, which comes to Rs.2,24,910/-.

14. As regards the income of the deceased pertaining to HUF, Ex.X3 is the income tax returns of the deceased (under HUF) for the year 2011-12 to 2013-14 with PAN No.AAFHA7710J. As per the evidence of PW.3, which is consonance with Ex.X3, the HUF income of the deceased for the Assessment year 2011-2012 is Rs.1,51,000/-; the HUF income for the Assessment Year 2012-2013 is Rs.2,26,316/-; and the HUF income for the Assessment Year 2013-2014 is Rs.2,22,067/-. It is common knowledge that there would ups and down in business. Therefore, this Court deems it appropriate to take the average income of the three assessment years as the gross annual income of the deceased pertaining to HUF, which comes to Rs.1,99,795/- rounded off to Rs.1,99,800/-. Further, the deceased, being the head of the family and Karta of the HUF, was managing the agricultural operations and maintaining the joint family business. Hence, this Court deems it appropriate to take $\frac{1}{3}^{\text{rd}}$ of the gross annual income of the deceased pertaining to HUF towards his services rendered to the joint family, which comes to Rs.66,600/-. So, the total annual income of the deceased (from HUF as well as individual income) comes to Rs.2,91,510/- (Rs.2,24,910 + Rs.66,600/-)

15. As per the decision of the Hon'ble Apex Court in **Rajesh and others Vs. Rajbir Singh and others**³, the future prospects for the age group of 50 to 60 years should be taken as 15%. So, by following the said principle, if 15% future prospects is added to the income of the deceased, the gross annual income of the deceased comes to Rs.3,35,237/- rounded off to Rs.3,35,240/-. From the said annual income of the deceased, Rs.2,50,000/- is tax exempted towards statutory deduction and from the income ranging from Rs.2,50,000/- to Rs.5,00,000/-, 10% tax will be deducted. So, the income tax on the annual income comes to Rs.8,524/-. So, after deducting Rs.8,524/-, the actual annual income of the deceased comes to Rs.3,26,716/- rounded off to Rs.3,26,720/-. The age of the deceased as on the date of the subject accident was 57 years 08 months 26 days and as such, the appropriate multiplier applicable to the age of the deceased is '9'. Thus, the total loss of dependency would come to Rs.29,40,480/- (Rs.Rs.3,26,720/- x 9). Further, following the decision of the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others**⁴, we deem it appropriate to grant Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. Thus, the

³ 2013 ACJ 1403

⁴ (2017) 16 SCC 680

respondent Nos.1 to 3/claimants are entitled for a total compensation of Rs.30,10,480/- (Rs.29,40,480 + Rs.70,000/-).

16. Ex.B1 is the true copy of the Insurance policy of the offending Swaraj Mazda Van/Bus bearing registration No.AP-15-X-5235, which was insured with the appellant herein. Further, while answering point No.1, the Tribunal held that there was rash and negligent driving on the part of the driver of the offending Swaraj Mazda Van/Bus bearing registration No.AP-15-X-5235 and there was no contributory negligence on the part of the deceased. The material placed on record reveals that there is no violation of the terms and conditions of the insurance policy. Therefore, the respondent Nos.1 and 2, being the driver and the owner of the offending Swaraj Mazda Van/Bus bearing registration No.AP-15-X-5235 respectively and the appellant herein, being the insurer, are jointly and severally liable to pay the aforementioned compensation awarded to the claimants.

17. Accordingly, the appeal is allowed in part, modifying the order, dated 27.08.2016, passed in MVOP No.258 of 2015 by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge at Karimnagar, by reducing the compensation from Rs.50,55,988/- to Rs.30,10,480/-. The said amount of

compensation carries interest at the rate of 7.5% per annum from the date of petition till realisation, besides costs. On deposit of the compensation, the respondent Nos.1 to 3/claimants are permitted to withdraw the entire amount along with the accrued interest. The other terms of the order under challenge, including apportionment, remain unaltered.

Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA

28th December, 2022
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