

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

M.A.C.M.A. No. 330 of 2015

JUDGMENT:

This appeal is preferred by the United India Insurance Company Limited, questioning the award and decree, dated 29.12.2014 passed in M.V.O.P.No. 836 of 2011 on the file of the Principal Motor Vehicle Accidents Claims Tribunal, Warangal (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.7,00,000/- for the death of the deceased, Jyothi Rajaiah, who died in a motor vehicle accident that occurred on 03.03.2011. According to the claimants, on the fateful day, while the deceased was proceeding to Simhachalam from his village, along with others, in a Toofan Jeep, when the Jeep reached Arempula Village, at about 12:30 a.m. on 04-03-2011, the offending vehicle i.e., Lorry bearing No. AP 16U 7947, owned by respondent No. 1, insured with respondent Nos. 2 & 3, being driven by its driver in a rash and negligent driving at high speed, dashed the Jeep. As

a result, the deceased sustained severe injuries and succumbed to the injuries while being shifted to hospital. According to the claimants, the deceased was 44 years, earning Rs.10,000/- per month doing agricultural works and as milk vendor and therefore, they laid the claim for Rs.7.00 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 Insurance Company, respondent Nos. 2 & 3 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.

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.6,27,400/- 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 lorry. 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 i.e., lorry and the Jeep in which the deceased was travelling; that there was 50% of contributory negligence on the part of driver of the Jeep and therefore, due to non-joinder of the necessary parties i.e., owner of the Jeep as well as its insurer, the tribunal ought to have dismissed the O.P. It is lastly contended that 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.5,200/-.

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.5 & A.6 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 and due to non-joinder of owner and insurer of the Jeep, the tribunal ought to have restricted the liability of the appellant at 50% only. As seen from the record, Ex.A.1, FIR, was registered against the driver of the crime vehicle basing on the complaint lodged by P.W.2, who is also an inmate of the Jeep and injured who witnessed the accident. 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, 338 IPC and Section 187 of the Motor Vehicles Act. 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.5 & A.6, FIR, M.V.I. Report 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 milk vendor, doing agriculture and earning Rs.10,000/- per month, as no supportive evidence was adduced by the claimants, the tribunal has rightly assessed the monthly income of the deceased at Rs.5,200/-, 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 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

27.12.2022
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