

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.2467 OF 2016

JUDGMENT:

This appeal is directed against the award dated 14.09.2015 in M.V.O.P.No.225 2014, on the file of the Chairman, Motor Accidents Claim Tribunal-cum-VII-Additional District Judge, Khammam (for short 'the Tribunal'), wherein the said claim application filed by respondent Nos.1 and 2 herein seeking compensation, was allowed-in-part, awarding compensation of Rs.6,88,000/- with interest at 7.5% per annum from the date of petition.

2. Heard learned counsel for the appellant-insurer and learned counsel for respondent Nos.1 and 2-claimants. Perused the record.

3. Respondent Nos.1 and 2-claimants filed claim application seeking compensation of Rs.7,00,000/- on account of death of the deceased Vijaya Laxmi @ Vijaya Kumari in a motor vehicle accident that occurred on 17.06.2013. Claimant No.1 is the husband and claimant No.2 is the daughter of the deceased. According to the claimants, on that day, while she was doing fruit business at about 1230 hours, one trolley lorry bearing

No.AP 27-X 1122, driven by its driver in a rash and negligent manner with high speed, coming from Thallada side and proceeding towards Khammam, dash the deceased, resulting in death of the deceased on the spot after receiving grievous injuries to her head. Police, Thallada registered a case in Cr.No.71 of 2013 for the offences punishable under Sections 337 and 304-A IPC against the driver of the trolley lorry. The deceased was aged about 25 years at the time of accident and was earning Rs.500/- per day on fruit business, besides doing other household works and used to contribute her earnings for the welfare of her family. Owing to the death of the deceased, the claimants lost love and affection.

4. Respondent No.3-owner of the trolley lorry remained *ex parte* before the Tribunal. The appellant-insurer filed counter opposing the claim and denying its liability to pay the compensation.

5. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the trolley lorry by its driver. The Tribunal

further held that the claimants are entitled for a total compensation of Rs.6,88,000/-. Accordingly, an award was passed for the said amount with interest 7.5% per annum from the date of petition till realization. Aggrieved by the said award of compensation, the present appeal is filed by the appellant-insurer.

6. The main contention of learned counsel for the appellant-insurer is that the appellant insurance company is not liable to pay compensation, as the driver of the crime vehicle was in a drunken state and the same amounts to violation of conditions of policy by the owner. Learned counsel further contends that the insurer adduced oral evidence of R.Ws.1 to 3 and documentary evidence Exs.B-1 and B-2 and proved that the driver of the crime vehicle was under the influence of alcohol at the time of accident and no liability can be fastened on the insurer on par with the insured. Therefore, the award of the Tribunal is erroneous and liable to be set aside.

7. *Per contra*, learned counsel for the respondents-claimants submits that the Tribunal had appreciated the evidence on record in proper perspective and had rightly fastened the liability on the

appellant-insurer and the owner of the vehicle and the Tribunal had not committed any error and the appeal is liable to be dismissed.

8. The appellant-insurer filed counter before the Tribunal contending that the driver of the lorry was not holding driving licence at the time of accident and the vehicle was not roadworthy to ply and the accident occurred only due to the sole negligence on the part of the deceased.

9. The appellant examined their Assistant Manager as R.W.1 and he stated that at the time of accident, the driver of the crime vehicle was in a drunken state and same is evident from the charge sheet filed by police against the driver of the crime vehicle for the offences punishable under Sections 304-A, 338 IPC and Sections 185 and 189 of the Motor Vehicles Act.

10. R.W.2, Dr.P.Asardharan of Karthik Superspeciality Hospital, Khammam, deposed that on the requisition of police, he examined the patient and his breath was smelling alcohol at the time of admission on 17.06.2013. Ex.B-2 is the requisition filed by the Sub-Inspector of Police, Thallada Police Station to the doctor of Telangana Hospital, Khammam to examine the driver of the lorry

to ascertain whether he was in a drunken state or not and Ex.B-3 is copy of the medical certificate issued by the doctor-R.W.2.

11. A perusal of Ex.B-2 would disclose that the driver was examined by the doctor on 17.06.2013 at 02:50 p.m., and his breath was smelling alcohol at the time of admission. The doctor, who issued the medical certificate, was examined as R.W.2 and in cross-examination, R.W.2 categorically admitted that in order to prove whether a person is alcoholic, a breath test or breath analyzer shall be made to know the actual condition and what was the percentage of alcohol found in the body of the individual. Since the blood samples of the driver of crime vehicle was not tested so also the breath analyzer test was not done and R.W.2 had specifically stated that he found smell of alcohol and with such evidence, it cannot be said that the driver of the crime vehicle was found in a drunken state and due to the said reason only, the alleged accident occurred.

12. Undisputedly, R.W.2 is an important witness to prove the drunken condition of the driver of the crime vehicle at the time of accident. The doctor himself admitted that normally testing

for assessment of whether a person is alcoholic, blood test or breath analyzer test has to be done and the same is not done in this case. Ex.A-2 charge sheet filed by the police against the driver of the crime vehicle shows that the driver was in a drunken state at the time of accident. Mere filing of charge sheet is not sufficient to conclude that the driver was in a drunken state and since accusation is made against the driver of the crime vehicle, the same depends upon proof beyond reasonable doubt in a criminal case. It settled principle of law that mere filing of charge sheet against the driver of the crime vehicle is not sufficient to conclude that the accident occurred due to the rash and negligent driving of the lorry and the Tribunal has to independently decide rashness and negligence basing on attending circumstances of each case. Admittedly, the Tribunal had taken into consideration the evidence of R.Ws.1 to 3 and also the charge sheet Ex.A-2 and independently, uninfluenced by the contents of the charge sheet held that the driver was not in a drunken state at the time of accident.

13. Coming to the computation of compensation, the Tribunal had taken into consideration the income of the deceased at

Rs.4,500/- per month and Rs.54,000/- per annum and after deducting one-third towards personal and living expenses, as per the decision of the Hon'ble Apex Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**¹, calculated the annual income at Rs.36,000/- (Rs.54,000/- - Rs.18,000/- i.e., one third of Rs.54,000/-). By applying appropriate multiplier '18' as per the above said decision, the Tribunal had assessed the loss of future income at Rs.6,48,000/- (Rs.36,000 x 18). The Tribunal had granted Rs.5,000/- towards transportation charges, Rs.25,000/- towards loss of consortium, Rs.10,000/- towards funeral expenses, making up a total compensation of Rs.6,88,000/ (Rs.5,000/- + Rs.25,000/- +, Rs.10,000/-)-. The said award of compensation under the difference heads is just compensation and it does not warrant interference. No cross-appeal is filed by the claimants against the award of compensation.

14. On a careful perusal of the material on record, I am of the view that as the blood samples of the driver were not collected or breath analyzer test was not done and basing on the evidence of

¹2009(6) SCC 121

R.W.2 and Ex.B-3, it cannot be said that the driver of the crime vehicle was in a drunken state at the time of accident. Therefore, I find no force in the contention of learned counsel for the appellant that the Tribunal had committed error in not holding that the driver was in a drunken state at the time accident. Consequently, the appeal fails and is liable to be dismissed.

15. In the result, the appeal is dismissed. There shall be no order as to costs.

16. Pending miscellaneous applications, if any, shall stand closed.

A.SANTHOSH REDDY, J

15.11.2022

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