

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

M.A.C.M.A.NO.3063 of 2018

JUDGMENT:

The appellant herein is respondent No.3 in M.V.O.P.No.493 of 2015, which was filed for compensation for the death of D.Kondaiah in a road accident. The Motor Accidents Claim Tribunal at Mahabubnagar, while accepting the contention of the respondents/claimants partly allowed the petition and awarded Rs.11,45,200/- under various heads with costs and interest @ 7.5% per annum.

2. Aggrieved by the said award, the respondent No.3 therein United India Insurance Co., Ltd., preferred this appeal on various ground. The main contention of the appellant herein is the Court below erred in fixing the entire responsibility to pay the compensation on the owner and insurer of the lorry, even though, there were two lorries involved in the accident. The other contention of the appellant herein is the trial Court committed an error in accepting or assessing the excess income of the deceased as Rs.6,000/- per month. Consequently, awarding Rs.7,68,000/- towards loss of future earnings of the deceased. It is also the case of the appellant that the Court below committed an error in adding

50% of the above said income of the deceased as future prospects. Therefore, the appellant sought for setting aside the award.

3. As per the material averments made in the petition, it was the case of respondents/claimants that on 04.10.2015, the deceased Kondaiah and respondents/claimants traveled in an Auto bearing No.AP 22Y 7384 and when they reached a petrol bunk near Ramreddy Gudem, the driver of a lorry bearing No.AP 16TW 8849 by driving the lorry in high speed and in a rash and negligent manner dashed the auto. The left front wheel of the lorry ran over the elder son of the deceased who died on the spot and the deceased also sustained severe head injury, and he succumbed to injuries while undergoing treatment at Hyderabad.

4. The petition was contested by the third respondent/insurance company. It was the case of appellant herein that the lorry driver was not having valid driving license, it amounts to violation of the policy conditions and while disputing other averments of the petition, they sought for dismissal of the petition. The Court below framed three issues as follows :

1. *Whether the deceased D.Kondaiah died in a motor accident due to rash and negligent driving of crime vehicle i.e., Lorry bearing No.AP 16TW 8849 ?*

2. *Whether the petitioners are entitled for compensation as prayed, if so against whom ?*
3. *To what relief ?*

5. The respondents/claimants examined the wife of the deceased herein as PW.1, marked Exs.A1 to A10. The insurance company marked the policy as Ex.B1. The Court below considered the oral and documentary evidence and came to the conclusion that the accident was occurred due to the rash and negligent driving of the lorry driver and awarded the amount as stated above.

6. The learned counsel for the appellant has submitted that two vehicles involved in the accident, when there was collusion between two vehicles it amounts to contributory negligence of both the drivers. The Court below ought to have fixed the liability on the driver and insurer of an auto in which the deceased and his family members traveled but instead the entire liability was fixed on the owner of the lorry and its insurer. He has also submitted there is no basis for arriving income as Rs.6,000/- per month and adding future prospects as additional amount to which the respondents/claimants are not entitled thereby, he

prayed for reducing the compensation amount by taking the contributory negligence of the auto driver.

7. Therefore, the points for consideration are :

1. *Whether there is a contributory negligence on the part of the auto driver if so, whether the owner and insurer of the auto are liable to pay compensation to the claimants?*
2. *Whether the amount awarded to the respondents/claimants is excessive if so, whether the same can be reduced and to what extent?*

8. I have perused the award passed by the Court below. Even though it is averred that the accident occurred between two vehicles, the evidence of PW.1 is very clear that the lorry dashed the auto, ran over her son and caused grievous injuries to the deceased resulting his death in the hospital. The Court below having conceded the oral evidence apart from crime detail forms and allegations in the charge sheet came to the wrong conclusion that the accident occurred due to the rash and negligent driving of the lorry driver. The appellant herein could not adduce any evidence to believe that there was contributory negligence by the auto driver. Admittedly, the police filed charge sheet against the lorry driver, therefore, I am unable to accept the contention of the appellant herein.

9. According to the evidence placed before this Court, it was stated the deceased was an auto driver and earning Rs.15,000/- per month. According to the award, it shows that Ex.A4 clearly disclose the occupation of the deceased as auto driver. Even though, there is no fixed income, it can safely be accepted by plying auto and with his agricultural land, the deceased can earn Rs.200/- per day and Rs.6,000/- per month. The evidence on record shows that the deceased was the manager of the house and he was maintaining his family with his earnings. The family includes wife, two more children apart from the other son who died in the accident. Therefore, there is no wrong in the finding of the Court below.

10. It is true 40% of the above said income was added as future prospects. Basing on the judgment in “***National Insurance Company Limited Vs. PranaySethi¹***”, appellant cannot dispute the said amount. The Hon’ble Apex Court was pleased to observe that in case of a person without fixed salary and with a fixed income, 40% of the same can be added towards future income. The other amounts under the head of loss of estate, loss of consortium, funeral expenses was also awarded on the basis of the above judgment. Therefore, there is no necessity

¹ AIR 2017 SC 5157

to disturb the findings and there are no merits in the appeal, as such, it is liable to be dismissed.

11. In the result, the appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed.

No costs.

JUSTICE SAMBASIVA RAO NAIDU

Date: 28.06.2022

PLV

