

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 3070 of 2018

JUDGMENT:

Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, in M.V.O.P.No.2138 of 2011 dated 06.10.2017, Bharati Axa General Insurance Company limited has filed the present appeal.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. Brief facts of the petitioners' case are that on 29.07.2011 when the deceased-J.Bhargavi along with her friends and others returning by walk from Sanjay Gandhi Memorial Government Polytechnic College, situated beside National Highway No.9 to Abdullapurmet village bus stop to go to their village and when they reached in front of Ramoji Film City Main Gate at about 3-15 p.m., a cement Heavy Mix Tanker bearing No. AP 4 X 4723 being driven by its driver came in a rash and negligent manner and dashed the divider hymax light pole, deceased and college students. Due to which, the deceased and her friend

N.Mamatha died on the spot and others sustained injuries. According to the petitioners, the deceased was aged 19 years and used to earn Rs.8,000/- per month by offering tuitions to students in Mathematics in her village. Thus, the petitioners claimed compensation of Rs.8,00,000/- under various heads.

4. Respondent No.1 remained ex parte; Respondent No.2 filed counter disputing the manner of accident, age, avocation and income of the deceased. It is further contended that the compensation claimed by the petitioners is highly excessive and prays to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the deceased died in the accident on 29.06.2011 due to rash and negligent driving of the driver of Cement Heavy Mix Tanker bearing No. AP 4 X 4723?
2. Whether the petitioners are entitled to any compensation, if so, to what extent and from whom?
3. To what relief?

6. In order to prove the issues, PWs.1 and 2 were examined and Exs.A1 to A8 got marked on behalf of the petitioners. On behalf of

respondent No.2, RW.1 was examined and Exs.B1 to B3 were marked.

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.8,09,000/- towards compensation to the claimants directing the respondent No.2 to satisfy the decree at the first instance and recover the same by initiating execution proceedings against respondent No.1 along with proportionate costs and interest @ 6% per annum from the date of petition till realization.

8. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned Counsel for the respondent Nos.1 to 3/claimants. Perused the material available on record.

9. The learned Standing Counsel for the appellant-Insurance Company contended that the accident occurred due to the contributory negligence; that the Tribunal without any basis took the monthly income of the deceased at Rs.4,000/- and the Tribunal failed to see that the driver of the offending vehicle had no driving license at the

time of accident and the amount awarded is exorbitant. Accordingly, prayed for setting aside the impugned order in the O.P.

10. The learned Counsel appearing on behalf of respondent Nos.1 to 3-claimants submitted that the Tribunal after considering the oral and documentary evidence available on record, has awarded reasonable compensation and the same needs no interference by this Court. Therefore, the learned counsel sought for dismissal of the appeal.

11. With regard to the manner of accident, the learned Standing counsel for the Insurance Company pleaded that the accident occurred due to the contributory negligence. However, the evidence of PW-2 who is eyewitness to the accident shows that the accident occurred due to the negligence of the driver of the crime vehicle and the deceased died on the spot. Further Ex.A1 F.I.R. and Ex.A4 charge sheet categorically shows that the police after thorough investigation filed charge sheet against the driver of the offending vehicle. Therefore, considering the evidence of PWs.1 and 2 coupled with the documentary evidence available on record, the Tribunal rightly held

that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

12. With regard to the quantum of compensation is concerned, according to the petitioners, the deceased was a Polytechnic student, aged 19 years and used to earn Rs.10,000/- per month by running tutorial. However, since there is no income proof, the Tribunal had taken the income of the deceased at Rs.4,000/- per month, added 50% of future prospectus on it and by deducting 50% towards personal and living expenses of the deceased who is a bachelor, awarded an amount of Rs.6,84,000/- towards loss of dependency. Further the Tribunal awarded an amount of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards cremation charges and in total, the Tribunal awarded an amount of Rs.8,09,000/-, which is just and reasonable.

13. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the offending vehicle. However, as per Ex.B3 Report given by R.T.A., Mathura shows that the driving license particulars furnished by Insurance Company was verified and RTA contended that the said driving

license was not issued. Therefore, following the decision of **National Insurance Company Limited vs. Swaran Singh and others**,¹ the Tribunal rightly directed the respondent No.2 to satisfy the decree at the first instance and recover the same by initiating execution proceedings against respondent No.1. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

14. In the result, the M.A.C.M.A. is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

23.11.2022
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¹ 2003 (2) ALD-36(SC)