APHC010389062019

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

3364

WEDNESDAY, THE FIRST DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE SRI JUSTICE A V RAVINDRA BABU

MOTOR ACCIDENTS CIVIL MISCELLANEOUS APPEAL No.1189 OF 2019

Between:

1. Kolli Narasamma,
   W/o.Thatayya,
   Aged about 48 Years,
   Hindu, Household Duties,
   R/o.Simmapeta Village,
   Bhogapuram Gram Panchayat,
   Bhogapuram Mandal,
   Vizianagaram District. --- Appellant

and

1. P. Kalyan, S/o.Ammi Raju,
   Aged about 29 Years, Hindu,
   R/o.D.No.34-818-24.

2. Saleha Syed,
   S/o.Ali Mohiddin,
   Aged about 46 Years,
   Muslim, R/o.D.No.34-12-10, 4th street.
   (R-1 & R-2 are R/o.Gandhi Nagar,
   Mandapeta, Kakinada,
   East Godavari District). --- Respondents

The Court made the following **Judgment**:

Challenge in this Motor Accidents Civil Miscellaneous Appeal is to the Award, dated 27.10.2016, in M.V.O.P. No.304 of 2013 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Judge, Family Court-cum-III Additional District Judge, Vizianagaram (for short, 'the Tribunal') whereunder the Tribunal dealing with the claim of compensation sought by the claimant to a tune of Rs.3,50,000/-

on account of the death of Kolli Tatayya (hereinafter referred to as 'the deceased') in a motor vehicle accident occurred on 22.10.2011, awarded a sum of Rs.2,96,000/- towards compensation.

2. The parties to this Appeal will hereinafter be referred to as described before the Tribunal, for the sake of convenience.

3. The case of the claimant, in brief, according to the averments set out in the claim, before the Tribunal, is that petitioner is the wife of the deceased. On 22.10.2011 when the deceased was standing on the side of the road canal and was waiting to board a vehicle, a lorry bearing registration No.AP 05 TU 3951 (for short, 'the offending vehicle') being driven by its driver in a rash and negligent manner came and turned turtle into the canal after dashing the deceased. As a result, he sustained injuries and was taken to the Government General Hospital, Vizianagaram, where he died. After completion of autopsy, the dead body of the deceased was handed over to the petitioner. Accident was occurred only due to the rash and negligent driving of the first respondent/driver. The Station House Officer, Bhogapuram Police registered a case in Crime No.219 of 2011 for the offence under Section 304-A IPC against the first respondent/driver. The deceased was aged about 50 years by the time of accident. He was hale and healthy and used to work as toddy tapper and earn Rs.500/- per day and eke out his family. On account of the sudden death of the deceased, the petitioner became destitute. She incurred expenses for transportation and funerals and she lost the company of her husband. Hence, she is claiming

compensation of Rs.3,50,000/-. First respondent, being the driver, second respondent, being the owner, and the third respondent, being the insurer of the offending vehicle are jointly and severally liable to pay compensation.

4. First and second respondents/driver and owner of the offending vehicle remained *ex parte*.

5. Third respondent/insurer of the offending vehicle got filed a counter contending in substance that the petitioner has to prove involvement of the offending vehicle and the policy issued by the insurance company. She has to prove the age, income of the deceased and the manner of the accident. Compensation claimed is excessive as such the Petition is liable to be dismissed.

6. The Tribunal, on the basis of the aforesaid pleadings, settled the following issues for trial:

> 1. Whether the accident was occurred on 22.10.2011 at about 03:00 p.m. near NH 5 road of Narupeta village in Bhogapuram Mandal, Vizianagaram District, due to rash and negligent driving of lorry bearing No.AP 05 TU 3951 HGV by its driver resulting in injuries to the petitioner?
> 2. Whether the petitioner is entitled to compensation and from which of the respondents?
> 3. To what relief?

7. The inadvertently framed first issue was later amended as follows:

Whether the motor vehicle accident took place on 22.10.2011 at about 03:00 p.m, near Narupeta village in Bhogapuram Mandal, Vizianagaram District due to rash and negligent driving of the lorry bearing No.AP 05 TU 3951 by its driver, resulting in death of Kolli Tatayya?

8. During the course of trial on behalf of the petitioner before the Tribunal, PWs.1 and PW.2 were examined and Exs.A-1 to A-5 and Ex.X-1 and X-2 were marked. On behalf of the contesting third respondent/insurer, RWs.1 and RW.2 were examined and Exs.B-1 to B-4 were marked.

9. The Tribunal, on hearing both sides and after considering the oral and documentary evidence on record, found that the accident occurred was due to rash and negligent driving of the driver of the offending vehicle. The Tribunal in awarding compensation arrived at the monthly income of the deceased as that of Rs.2,000/- on the basis of notional theory and awarded compensation of Rs.2,96,000/-. On the ground that the deceased was an un-authorized passenger in the cabin of the offending vehicle and Ex.B-2 policy did not cover the deceased, the Tribunal fixed up the responsibility against first and second respondents to pay the compensation to the petitioner and dismissed the claim against the third respondent.

10. Felt aggrieved of the situation that the Tribunal did not award just compensation and further did not fix up the responsibility

against the third respondent/insurer, the claimant filed the present Appeal.

11. Now in deciding the present Appeal, the simple question that falls for consideration is:

> Whether the Award of the Tribunal, dated 27.10.2016, in M.V.O.P. No.304 of 2013, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Judge, Family Court,-cum-III Additional District Judge, Vizianagaram in awarding compensation of Rs.2,96,000/- against the original claim of Rs.3,50,000/- and fixing up the responsibility against first and second respondents by absolving the responsibility against third respondent is sustainable under law and facts and whether there are any grounds to interfere with the same?

POINT:

12. Smt. P. Saraswathi, learned counsel for the appellant, would canvass a contention that the Tribunal did not consider appropriate compensation and considered the notional income of the deceased in a very lesser manner *i.e.,* Rs.2,000/- and further did not fix up the responsibility against the third respondent/insurer. In support of her contention that the compensation is to be enhanced, she relied upon a decision of this Court in M.A.C.M.A. No.695 of 2017, dated 03.10.2023, and a decision of the Hon'ble Apex Court in Special Leave Petition (Civil) No.15747 of 2010, dated 09.08.2011.

13. Sri Amancharla Satish Babu, learned counsel for the third respondent/insurer, would contend that the Tribunal on overall appreciation of the evidence on record, rightly absolved third respondent/insurer from liability and awarded just compensation as such the award of the Tribunal need not be interfered with.

14. PW.1 before the Tribunal was no other than the petitioner, who adverted to the facts in tune with her pleadings. Through her examination, Exs.A-1 to A-5 were marked. She got examined PW.2, who was a witness to the occurrence to prove rash and negligent driving against the first respondent. According to PW.2, he was a witness to the occurrence. He gave report under Ex.A-1. The representative of the third respondent was examined as RW.1 and further through his examination, Exs.B-1 to B-3 were marked. Apart from this, the third respondent got examined RW.2 in support of his contention that the offending vehicle was goods carrying vehicle and no person can travel therein. As against the findings of the Tribunal that the accident occurred was on account of the rash and negligent act alleged against the first respondent, there is no cross-objection or cross-appeal filed by the respondents. However, the fact remained is that, according to the petitioner, when the deceased was walking on the left side of the canal so as to board a vehicle, the offending vehicle came and hit him. But by virtue of Ex.A-1, report lodged by PW.2 and the outcome of the investigation the fact remained is that the deceased was traveling in the cabin of the lorry. So, admittedly in the pleadings, the petitioner twisted the facts. The Tribunal made appropriate findings in this regard that the manner in

which the accident occurred was when the deceased was traveling in the cabin of the lorry as an un-authorized passenger. Insofar as those findings are concerned, they are not sought to be disturbed in the memorandum of grounds of Appeal or during the course of hearing of the Appeal.

15. Turning to the aforesaid two decisions, cited by learned counsel for the appellant/petitioner, they are concerning to enhancement of the compensation in the particular facts and circumstances considering the contentions raised on factual adjudication. They are not relating to laying down of any principle.

16. Now firstly this Court would like to deal with the quantum of compensation. The accident was occurred on 22.10.2011. The case of the claimant is that the deceased used to work as toddy tapper and earn Rs.500/- per day. The Tribunal, on the ground that no proof was filed to show the income of the deceased, fixed the monthly income of the deceased as that of Rs.2,000/-, thereby his annual income would be Rs.24,000/- and deducted 1/3rd towards his personal and living expenses. The amount of Rs.24,000/- fixed as annual income of the deceased on notional theory is quietly on lower side. In the year 2011, even the minimum wage which a labourer was supposed to get would be more than Rs.100/- per day. Hence, it is appropriate to consider the notional income of the deceased as Rs.3,000/- p.m. In view of the decision of the Hon'ble Apex Court in ***Sarla Verma and others v. Delhi Road Transport***

Corporation and another[1], 1/3rd of his income has to be deducted towards his personal and living expenses, thereby the net amount which the deceased would contribute to his family members *i.e.,* to the petitioner would be Rs.24,000/- p.a. In view of the decision of the Hon'ble Apex Court in ***Sarla Verma*** (*supra*), the appropriate multiplier applicable to the age group of the deceased *i.e.,* 46 to 50 years is 13. However, the Tribunal erroneously applied the irrelevant multiplier 11 *i.e.,* applicable to the age group of 51 to 55 years. It is to be noted that as the Tribunal applied the irrelevant multiplier with multiplier 13, now the multiplicand is to be arrived at 24,000/- x 13 = Rs.3,12,000/-. Further, in view of the decision of the Hon'ble Apex Court in ***National Insurance Company Limited v. Pranay Sethi and others***[2], the amount of compensation to be awarded to the petitioner under the conventional heads is Rs.70,000/-. So, the petitioner is entitled to a total compensation of Rs.3,82,000/-. Though the petitioner claimed compensation of Rs.3,50,000/- but there is no embargo to grant the compensation of Rs.3,82,000/- by directing the appellant/petitioner to pay the relevant Court fees on Rs.32,000/-.

17. Now, coming to the aspect that the deceased is an un-authorized passenger, who travelled in the cabin of the offending vehicle, and met with the accident, as seen from Ex.X-2 – B-Register Extract, the second respondent is the owner of the offending vehicle which is meant to carry the goods and no

[1] AIR (2009) SC 3104
[2] 2017 (16) SCC 680

passenger is allowed to travel in the vehicle and if any person travels in the vehicle, it amounts to violation of the insurance policy.

18. As seen from the award of the Tribunal, learned counsel for the third respondent/insurer relied upon a decision of the Hon'ble Apex Court in ***National Insurance Company Limited v. Bommidi Subbayyamma and others***[3], where the death of the gratuitous passenger was occurred in a truck, when it met with an accident and the Tribunal awarded the compensation but exempted the insurance company from liability. The High Court fixed the liability against the insurance company by holding that the insurance company is not liable and claimants have to recover the amount from the owner. Similarly, the Tribunal relied upon another decision in ***New India Assurance Company Limited v. Vedawati and others***[4].

19. At the same time, learned counsel for the appellant/petitioner relied upon a decision of the Hon'ble Apex Court in ***Oriental Insurance Company Limited, Hyderabad. v. Tadi Lova Raju and another***[5], where it is held that the insurance company has to pay the amount to the claimant where the injured was a gratuitous passenger and to recover the same from the owner later.

20. The Tribunal distinguished the citations relied upon by learned counsel appellant/petitioner with the facts on hand. The findings of

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[3] 2005 ACJ 721
[4] 2007 ACJ 1043
[5] 2014 (2) An.W.R. 970 (AP)

the Tribunal are that the case of the claimant was that the deceased was standing by the side of the canal and the offending vehicle came and dashed him causing his death. The Tribunal took into consideration the fact that according to Ex.A-1, which was given at the earliest point of time, deceased was travelling in the cabin of the lorry as an un-authorized passenger. So, the Tribunal looked into the conduct of the petitioner in twisting the facts and declined to apply the principle of pay and recovery.

21. Having regard to the overall facts and circumstances, this Court does not see any reason to interfere with the said finding of the Tribunal but insofar as the quantum of compensation is concerned, the Tribunal did not fix up the compensation properly and as this Court already pointed out, the petitioner is entitled to the enhanced compensation of Rs.3,82,000/-. Therefore, it needs to be enhanced accordingly by confirming other aspects of the award.

22. In the result, the Motor Accidents Civil Miscellaneous Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.2,96,000/- to that of Rs.3,82,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and fixing up the responsibility to pay compensation only against first and second respondents. First and second respondents are directed to deposit the compensation amount within a period of one month from this date. The appellant/petitioner is directed to pay the necessary Court fee on the amount of Rs.32,000/- before the Registry within a period of one week from this date. On deposit of the compensation

amount before the Tribunal, the appellant/petitioner is entitled to withdraw the entire compensation. No order as to costs.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

JUSTICE A.V.RAVINDRA BABU

Date: 01.05.2024
DSH