

**HONOURABLE SRI JUSTICE M. GANGA RAO**

**M.A.C.M.A.No.1315 of 2007**

**JUDGMENT:**

The appellant is the insurance company filed this appeal being aggrieved by the order and decree dated 23-02-2007 passed in MVOP.No.740 of 2003 by the Motor Accident Claims Tribunal-cum-VI Additional District Judge, East Godavari at Rajahmundry, granting total compensation of Rs.2,00,000/- with costs and interest at 7.5% p.a. from the date of petition till realization payable by the appellant-insurance company to the claimants.

For the sake of convenience, the parties herein are referred as arrayed before the Tribunal.

2. The claimants filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.2,00,000/- for the grievous injuries sustained in the accident that occurred on 26-12-2012, stating that the 1<sup>st</sup> respondent drove his Auto bearing No.AP-5-Y-2158 in a rash and negligent manner with high speed came from Alamuru side and dashed the deceased Nandikolla Gangarao who stood on the main road at Gummileru leading from Mandapeta to Alamuru with baskets after completion of the loading of the husk in the lorry bearing No.AP-12-T-5638 in which he worked as a Jattu coolie. Immediately, after the incident he was shifted to Government Hospital, Mandapeta and thereafter he was shifted to Government General Hospital, Kakinada and took treatment. In spite of his treatment and spending an amount of Rs.30,000/- towards medical and other expenses, he became crippled. He was aged about 19 and used to earn Rs.3,000/- per month at the time of accident.

During the pendency of the petition, the 1<sup>st</sup> claimant died on 16-01-2006, as such, the parents of the deceased were added as his legal representatives as per orders in I.A.No.186 of 2006, dated 05-04-2006.

2. The 1<sup>st</sup> respondent driver and the 2<sup>nd</sup> respondent owner of the crime auto remained *ex parte*. The 3<sup>rd</sup> respondent insurance company filed its counter denying all the averments of the claim petition. They specifically pleaded that the offending auto was issued with the appellant-insurance company and they denied the rash and negligent driving on the part of the driver of the offending vehicle. After the death of the deceased, the parents of the deceased were impleaded as legal representatives of the deceased. But the appellant-insurance company reported no additional counter.

Based on the above pleadings, the Tribunal framed the following issues for trial.

- 1) Whether the accident occurred on account of rash and negligent driving of the vehicle by its driver R1?
- 2) Whether the 1<sup>st</sup> petitioner is entitled to any compensation, if so, to what amount and against whom?
- 3) To what relief/

During enquiry, PWs.1 to 4 were examined and Exs.A.1 to A.30 were marked on behalf of the claimants. On the other hand, no witness was examined and Ex.B.1 was marked on behalf of the respondents.

The Tribunal, based on the evidence of PW.2 coupled with Ex.A.1-certified copy of FIR in Crime No.128 of 2002, Ex.A.2-copy of the wound certificate issued by Civil Assistant Surgeon, Ex.A.-3

M.V.I. report to the effect that the accident was not occurred due to mechanical defect and Ex.A.4-charge sheet, held that the accident was occurred on account of rash and negligent driving of the crime auto by its driver-1<sup>st</sup> respondent. With regard to quantum of compensation, in the absence of any evidence in respect of income of the deceased, the Tribunal estimated the income of the deceased as Rs.1,500/- per month and after deducting 1/3 towards personal savings of the deceased from out of total income of Rs.18,000/- per annum, and by applying appropriate multiplier of '15' as per the Second Schedule to the Motor Vehicles Act, since the deceased was unmarried, the Tribunal taken the age of the mother who was aged about 43 years at the time of impleadment and arrived at the loss of dependency to Rs.1,80,000/- (12,000 X 15). In addition to the said amount, the Tribunal also awarded an amount of Rs.10,000/- each towards loss of love and affection and loss of estate; Rs.2,500/- towards funeral expenses and Rs.5,000/- towards medical expenses under Ex.A.9 to A.18 as certified by the doctor. In total, the Tribunal awarded total compensation of Rs.2,17,500/- for the death of the deceased, but it was restricted to claim amount of Rs.2,00,000/- with interest at 7.5% p.a. from the date of petition till realization. In view of existence of Ex.B.1-insurance policy for the crime auto at the time of accident, the Tribunal held that the respondents 1 to 3 are jointly and severally liable to pay compensation to the claimants. Challenging the said award, the insurance company filed the present appeal.

Heard the learned standing counsel for the appellants and the learned counsel for the respondents.

Learned standing counsel for the appellants would contend that there is no nexus between the injuries sustained in the accident and the cause of the death of the deceased, as the deceased was died after three years and in the absence of conduct of Post Mortem for the cause of the death, the same could not be attributed to the injuries sustained in the accident. Learned standing counsel further states that the deceased was admittedly in the course of employment and hence, the employer and the insurer of the lorry bearing No.AP-12-T-5638 are also proper and necessary parties to the case and without their impleadment, the Tribunal granted compensation. The compensation granted by the Tribunal is on higher side. The Tribunal erred in granting compensation under various heads.

Per contra, Sri N. Siva Reddy, learned counsel appearing for the respondents-claimants submits that the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the auto, which was insured with the appellant insurance company. Even though the deceased expired after three years during the pendency of the claim petition, his parents, mother and father got impleaded as legal representatives of the deceased vide orders in I.A.No.186 of 2006 dated 05.04.2006. But, the learned standing counsel for the appellants reported no additional counter. Hence, the claim is not contested by the appellant-insurance company before the Tribunal.

With regard to the claims of the appellant insurance company, as seen from the award of the Tribunal, this court found that the Tribunal, based on the evidence of PWs.1 and 2 coupled with Exs.A.1 to A.4, held that the accident was occurred on account of rash and negligent driving of the crime auto by its driver 1<sup>st</sup> respondent. In the absence of contrary evidence, the finding of the Tribunal could not be found fault with. Considering the evidence of PW.4, the doctor, who treated the deceased, coupled with Ex.A.2-wound certificate, Ex.A.5-discharge summary, Ex.A.6 and A.7-C.T. scans, Ex.A.8-C.T. scan report, Ex.A.19-case sheet along with X-ray, the Tribunal held that the deceased received fracture of left frontal bone which is not only grievous in nature but also danger to life and that the deceased was unconscious at the time of accident. The Tribunal rightly came to the conclusion that the deceased died due to serious internal injuries which are sustained in the accident. The Tribunal, for deciding quantum of compensation, in the absence of evidence in support of the claim that the deceased used to earn Rs.3,000/- per month, the Tribunal estimated the income of the deceased at Rs.1,500/- per month and arrived annual income of the deceased at Rs.18,000/- per annum from which the Tribunal deducted 1/3<sup>rd</sup> towards personal expenses of the deceased. While calculating loss of dependency, the Tribunal estimated the income of the deceased at Rs.12,000/- p.a. and the Tribunal applied the multiplier '15' taking the age of the deceased as 19 years. After deducting 1/3<sup>rd</sup> towards personal expenses of the deceased, the Tribunal has arrived at the compensation at Rs.1,80,000/- (12,000 X

15) towards loss of dependency. In addition to that, the Tribunal granted Rs.10,000/- each towards loss of love and affection and loss of estate. The Tribunal also granted Rs.2,500/- towards funeral expenses, Rs.5,000/- towards medical expenses. So, the Tribunal totally granted Rs.2,17,500/- (Rs.1,80,000/- + Rs.10,000/- + Rs.10,000/- + Rs.10,000/- + Rs.2,500/- + Rs.5,000/-) as compensation for the death of the deceased. The Tribunal restricted the compensation to the claim made by the claimants to Rs.2,00,000/- and the same was equally apportioned between the claimants. The Tribunal held that the respondents 1 to 3 are jointly and severally liable to pay the compensation to the claimants with proportionate costs and interest at 7.5%p.a. from the date of filing of the petition till realization.

In the facts and circumstances of the case and considering the evidence on record and the submission of the learned counsel, this court found that the Tribunal rightly arrived the just compensation payable to the claimants at Rs.2,17,500/-, which was restricted to Rs.2,00,000/- as claimed by the claimants. The Tribunal is justified in granting the claim amount and granting of compensation under various heads could not be said to be illegal. Hence, the findings given by the Tribunal in arriving at a just conclusion cannot be found fault with. The appellant insurance company is not entitled to file this appeal on merits of the claim which was awarded by the Tribunal in the absence of statutory permission under Section 170 of the Motor Vehicles Act to contest the matter on merits as held by the Hon'ble Supreme Court in the case of **Shankarayya and another v. United**

**India Insurance Co. Ltd.,<sup>1</sup>**. Hence, the appeal is devoid of any merit and the same is liable to be dismissed.

Accordingly, the appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

**M. GANGA RAO, J**

Date: 26-02-2019

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<sup>1</sup> 1998 ACJ 513