

THE HONOURABLE SRI JUSTIE M. GANGA RAO

M.A.C.M.A.No.3124 of 2005

JUDGMENT:

The appellants, who are grandparents of the deceased filed this appeal against the award and decree, dated 25.02.2004 passed in M.V.O.P.No.209 of 1999 in the Motor Vehicles Accidents Claims Tribunal cum II Additional District Judge, Madanapalle whereby dismissed the claim petition filed by the claimant/sixth respondent. The claimant/sixth respondent, being the mother of the deceased Daniel filed claim petition under Section 166 (1) of the Motor Vehicles Act alleging that on the intervening night of 13/14.02.1999 while the deceased Daniel was proceeding in the jeep bearing No.AP 9Q 4868 as its driver on Rajiv Rahadari Road, a lorry bearing No. ADT 7991 came in opposite direction in rash and negligent manner dashed the jeep, as a result of which he received severe injuries all over the body and succumbed to the said injuries on the spot. It is further stated that the deceased was aged about 22 years and working as the driver in P.L.Reddy & Company, Engineering Contractors, Tirupathi and was getting a salary of Rs.2,500/- per month. The appellants, being dependant on the earnings of the deceased, due to the sudden demise of the deceased, have lost love and affection and earnings of the deceased and seeking claim for compensation of Rs.2,00,000/-.

The first and third respondents have remained *ex parte*.

The second and fourth respondents filed their counters denying the averments in the claim petition and they refused to

accept that the claimant alone is the sole surviving dependant and legal representative of the deceased Daniel and further stated that the father and the grandparents of the deceased are alive and they are also dependents. In the absence of other legal heirs of the deceased, the petition is liable to be dismissed.

Subsequent to the filing of the written statement, respondents 5 to 7 have come on record through I.A.No.453 of 2000 and the same is allowed on 28.12.2000. The respondents 5 to 7 have brought on record as they are under the care and custody of deceased Daniel who looked after their welfare.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- i) Whether the accident occurred on account of the rash and negligent driving by the drivers of the offending vehicles lorry bearing No. ADT 7991 and jeep bearing Registered No.AP 9A 4868 involved in the accident and whether it resulted in the death of deceased?*
- ii) Whether the petitioner is entitled for compensation and if so payable by whom and to what extent?*
- iii) To what relief?*

And also Additional Issue also framed:

- 1. Whether the petitioner is able to establish that she is the sole legal representative of the deceased Daniel?*

The claimant in support of her claim examined herself as PW.1 and got marked Exs.A1 to A7. Among them, Ex.A1 is the certified copy of the FIR in Cr.No.5 of 1999 of Koheda Police Station (Karimnagar District), Ex.A2 is the certified copy of the postmortem certificate, Ex.A3 is household supply card, Ex.A4 is the certified copy of the charge sheet, Ex.A5 is the voters list of Vayalpad

Assembly Constituency, Ex.A6 is the salary certificate of the deceased and Ex.A7 is the residential certificate regarding to respondents 5 to 7 issued by Secretary, Maddipatlavaripalem.

The seventh respondent has got herself examined as RW.1 and also got examined Indiramma and Sarpanch of Maddipatlavaripalle as RWs.2 and 3. In addition to that RWs.2 and 3 are examined, Exs.X1 and X2 were marked. Ex.B1 is marked by consent of the party. The Tribunal having considered the evidence of PW.1 and Exs.A1 to A4, committed grave error in holding that the claimant failed to prove that the accident occurred due to rash and negligent driving of the offending lorry bearing No. ADT 7991. As per the evidence of PW.1 coupled with the documents Ex.A1/FIR and Ex.A-4/charge sheet, the accident had occurred due to rash and negligent driving of the offending vehicle, as a result of which, the death of the deceased had occurred. The Tribunal came to the conclusion that the claimant having filed the petition under Section 166(1) Motor Vehicles Act has to prove the rash and negligent driving of the offending lorry by its driver, to grant compensation. The Tribunal has not quantified compensation, on the ground that the rash and negligent driving itself is not proved. Having heard the learned counsel for the parties and perused the evidence of PW.1 coupled with Ex.A1, Ex.A2, Ex.A3 and Ex.A4, this Court came to the conclusion that the accident occurred due to collusion of the two vehicles lorry bearing No.ADT 7991 and the jeep bearing No.AP 9A 4868 due to rash and negligent driving of the offending lorry by its driver and the deceased died on the spot. In view of the same, this Court now assess the income of the deceased based on the

evidence of PW.1, mother of the deceased and the certified copy of the salary certificate, Ex.A6 is not disputed by the respondents. The deceased was aged about 22 years as on the date of the accident and he was hale and healthy. Due to sudden demise of the deceased, the appellants and the 6th respondent herein have lost their bread winner as they were dependent on the income of the deceased. The evidence of PW.1 and salary certificate/Ex.A-6 could not be disbelieved in the absence of the contrary evidence. The income of the deceased could be taken as Rs.2,500/- per month. The Hon'ble Supreme Court in the case of ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***¹ held that even agriculture labourer used to get Rs.4,500/- per month, whereas in the present case, it appears that the deceased worked in P.L.Reddy & Company Engineering Contractors, Tirupathi and his salary certificate is filed as Ex.A6 and in view of the same, the annual income of the deceased could be taken as Rs.30,000/- (Rs.2,500/- X 12) out of which, Rs.15,000/- has to be deducted being half of the annual income towards his personal expenses as the deceased was unmarried at the time of the accident. Since the deceased was aged 22 years at the time of accident, as per the decision in ***Sarla Verma and others vs. Delhi Transport Corporation and another***² the annual loss of dependency could be arrived at by applying multiplier '18', which comes to Rs.2,70,000/- (Rs.15,000/- x18). In addition to it, the appellants/respondents 6 and 7 are entitled for Rs.15,000/- towards loss of estate and Rs.15,000/-

¹ 2011 (6) ALT 48 (SC)

² 2009 (6) SCC 121

towards transportation and funeral expenses as per the decision in ***National Insurance Company Limited vs. Pranay Sethi and others***³.

This Court, in the facts and circumstances of the case and in view of the above discussion, felt it just and appropriate to grant total compensation of Rs.3,00,000/- to the appellants/respondents 6 and 7 with appropriate costs and interest. The respondents 1 and 2, being the insurer and insured of the offending lorry bearing No.ADT 7991, are jointly and severally liable to pay the compensation of Rs.3,00,000/- along with proportionate costs and interest at 7.5% per annum from the date of petition till realization of the amount.

Accordingly, in view of above discussion, the appeal is allowed as indicated above.

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

JUSTICE M.GANGA RAO

Dated 11.02.2019
SPR

³ 2017 ACJ 2700

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