APHC010325952019

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3505]

FRIDAY, THE TWENTY FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1057/2019

Between:

1. ORIENTAL INSURANCE COMPANY LIMITED, REP BY ITS DIVISIONAL MANAGER, INNESPETA, RAJAMAHENDRAVARAM.

...APPELLANT

AND

1. RAJALA SRINU, S/O LATE NOOKA RAJU AGED 39 YEARS, HINDU, RIO D.NO.9-160, HARIJANAPETA, KIRLAMPUDI VILLAGE AND MANDAL, EAST GODAVARI DISTRICT
2. RAJALA CHINNATHALLI, W/O SRINU AGED 31 YEARS, HINDU, R/O D.NO.5-79, S.C.PETA, VELANKA VILLAGE, KIRLAMPUDI VILLAGE AND MANDAL, EAST GODAVARI DISTRICT
3. MURREY SANJIV ANJI, S/O.SURYA RAO, HINDU, AGE 24 YEARS, DRIVER OF TRACTOR BEARING REGISTRATION NO.AP-05-BL-6432 CUM TRAILER BEARING REGISTRATION NO.AP-05-Y-4709 R/O D.NO.47-121, DHARMAVARAM VILLAGE, NEAR

VETERINARY HOSPITAL, PRATHIPADU MANDAL, EAST GODAVARI DISTRICT.

4. DODDIPATLA RAMA RAO, S/O KRISHNA MURTHY, HINDU, AGE 60 YEARS, OWNER OF TRACTOR BEARING REGISTRATION NO.AP-05-BL-6432 CUM TRAILER BEARING REGISTRATION NO.AP-05-Y-4709 R/O D.NO.47-121, DHARMAVARAM VILLAGE, NEAR VETERINARY HOSPITAL, PRATHIPADU MANDAL, EAST GODAVARI DISTRICT.

5. BACHALA SURIBABU, S/O SESHAIAH, HINDU, AGED 54 YEARS, DRIVER OF MAXI CAB BEARING REGISTRATION NO.AP-05-TC-3658, R/O D.NO.5-2, HARIJANAPETA, VELANKA VILLAGE, KIRLAMPUCLI MANDAL, EAST GODAVARI DISTRICT

6. BACHALA MANIKANTA, S/O SURIBABU, HINDU, AGED 26 YEARS, OWNER OF MAXI CAB BEARING REGISTRATION NO.AP-05-TC-3658, R/O D. NO.5-2, HARIJANAPETA, VELANKA VILLAGE, KIRLAMPUDI MANDAL, EAST GODAVARI DISTRICT

7. NATIONAL NSURANCE COMPANY LIMITED, REPRESENTED BY DIVISIONAL MANAGER, KAKINADA, EAST GODAVARI DISTRICT (RESPONDENT NOS.5 TO 7 ARE NOT NECESSARY PARTIES)

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court pleased to allow this appeal by setting aside the Decree and Order/Judgment dated 01.05.2019 passed in M.V.O.P.No. 61 of 2018 on the file of the Motor Vehicles Accident Claims Tribunal-Cum-1 Additional District Judge East Godavari at Rajamahendravaram filed by the Respondent Nos.1 and 2/Claim petitioners against the Appellant herein/ Respondent No.3 and pass

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings dated 01-05-2019 passed in MVOP No.61 of 2018 on the file of the Motor Vehicles Accident Claims Tribunal cum 1st Additional District Judge East Godavari at Rajamahendravaram including execution proceedings and pass

Counsel for the Appellant:

1. A JAYANTHI

Counsel for the Respondent(S):

1. T D PANI KUMAR
2. V VEERABHADRA CHARY

The Court made the following:

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

M.A.C.M.A.NO: 1057/2019

JUDGMENT :

Questioning order dated 01.05.2019 in M.V.O.P.No.61 of 2018 on the file of the Motor Accidents Claims Tribunal-cum- I Additional District and Sessions Court, East Godavari, Rajamahendravaram, the present appeal is preferred by Oriental Insurance Company Limited.

2. For the sake of the convenience the parties are referred to as mentioned in the claim petition.

3. The petitioners are the parents of Rajala Raja Babu @ Babu (herein after referred to as deceased) filed petition under section 166 of Motor Vehicle Act claiming compensation of Rs.6,00,000/- on account of death of their son Rajala Raja Babu @ Babu, due to the injuries sustained by him in the accident that occurred on 03.05.2016 in which the offending tractor bearing registration No. AP 05 BL 6432 and trailer bearing No. AP 05 Y 4709 were involved. It is further case of the petitioners that the

deceased boarded Maxi Cab bearing registration No. AP 05 TC 3658, so as to attend coolie works. The offending tractor and trailer driven by the respondent No.1 came in wrong route at high speed, in rash and negligent manner and dashed the maxi cab. As a result of which the wooden logs loaded on the trailer fell on the Maxi Cab, there by the deceased sustained severe injuries and died on the spot. A case in Cr.No.59/2016 was registered on the file of the Prathipadu Police Station, under section 304-A of Indian Penal Code. It was further the case of the petitioners that the deceased was hale and healthy and he was aged 16 years as on the date of the accident. It was further stated that he used to attend the coolie works and earn around Rs500/- to Rs.600/- per day and on an average Rs.12,000/- per month and the same was being contributed to maintain family. In view of the sudden death of the deceased, the petitioners lost financial support, love and affection of the deceased. In those circumstances they approached the Tribunal by filing the above petition.

4. Respondent Nos.1 & 2 the driver and the owner of the offending vehicle remained ex-parte. The respondent No.3/Insurance Company filed counter, denying the averments

made in the claim petition. It disputed the manner and which the accident occurred, it also disputed the age and occupation and the income of the deceased. It was further stated that the respondent No.2 though had knowledge that the respondent No.1 had not valid driving license, allowed him to drive the same and thereby violated the terms and conditions of the policy and in such circumstances, the respondent No.3/Insurance Company is not liable to pay the compensation as claimed by the petitioners and further stated that if till any compensation was to be paid the same has to be paid by the respondent Nos.1 & 3. It was further contended that the Maxi Cab was over loaded with the passengers and the driver of the tractor was not responsible for occurrence of accident. Further it was stated that the claim made by the petitioners was excessive. The respondent Nos. 4 & 5 i.e., driver and owner of the Maxi Cab remained exparte. The respondent No.6 insurance company (insurer of the Maxi Cab) filed counter-affidavit stating that there was no negligence on the part of the driver of the Maxi Cab and the accident was occurred due to the negligence of the driver of the tractor and trailer. It was further stated that crime was registered against the respondent

No.1 alone and nothing was placed on record to show that there was negligence on the part of the respondent No.4 driver. It was further stated that the respondent No.6 is not liable to pay the compensation and it was made as formal party to the petition and prayed to dismiss the claim petition against it.

5. In order to substantiate the claim of the petitioners the mother of the deceased was examined as PW-1 and filed documents which were marked as Exhibit A1- Exhibit A11. On the other hand the respondent No.3 examined employee of the insurance company as RW-1 and marked copy of the policy as Exhibit-B1. After appreciating the oral and documentary evidence placed by the parties, the Tribunal by order under challenge partly allowed the claim petition by awarding compensation of Rs.3,15,000/- fastening the liability on respondent Nos.1 to 3 together with interest @ 7.5% per annum from the date of petition till the date of realization. Aggrieved by the quantum of compensation awarded, the respondent No.3 insurance company filed the present appeal.

6. Heard counsel for the appellant and counsel appearing for the respondent No.1 & 2. There is no appearance

for respondent Nos. 3 to 6. Sri V.V.Veerabrahmendra Chary appeared for the respondent No.7. Perused the material available on record.

7. The counsel for the appellant would submit that the accident was occurred due to the negligence of the driver of the Maxi Cab and despite the same, the Tribunal erred in fixing the negligence on the driver of tractor-cum-trailer. In order to substantiate the same, the respondent No.3 insurance company did not place anything on record. Though the employee of the insurance company was examined, on perusal of his evidence would go to show that, he only spoke about the terms and conditions of the policy and its liability. In such circumstances, the evidence of RW-1 will not come to rescue of the appellant insurance company. On the other hand the petitioners have filed copies of F.I.R and Charge Sheet which were marked as Exhibit-A1 and Exhibit A5. On perusal of the contents of the above documents would clearly show that a crime was registered against the respondent No.1/driver of the offending tractor and trailer and later same was investigated into and charge sheet was filed against the respondent No.1 alone. Further it is apparent

from the record that the respondent No.1 & 2 did not give any complaint against the driver of the Maxi Cab. In the absence of any material available on record, this court is not inclined to interfere with the finding recorded by the Tribunal. In view of the same, the contention of the counsel for the appellant in this regard is liable to be rejected.

8. Though the counsel for the appellant would strenuously contend that the respondent No.1 had not valid driving license as on the date of the accident, admittedly the appellant insurance company has not taken any step to prove the same except making bald averments in the counter-affidavit. As the burden is on the appellant insurance company, further the same is not discharged by placing sufficient material on record, this Court is not inclined to accept the said contention of the counsel for appellant. Accordingly the same is also rejected.

9. Coming to the quantum awarded by the Tribunal, though the petitioners have claimed that the deceased was earning an amount of Rs.12,000/- per month, the same was disbelieved by the Tribunal on the ground that no material was placed on record to prove the same. However, the income of the

deceased was taken as Rs.15,000/- per annum and accordingly awarded compensation of Rs.3,15,000/- under various heads. It is not in dispute that the average income of the coolie would be around Rs.200 per day as on the date of the accident. If the same is taken into account, the income of the petitioner would be around Rs.6,000/- per month. A perusal of the order under challenge would show that while fixing the income of the deceased as Rs.15,000/- per month, the Tribunal failed to give any reasoning nor it is appreciated the case of the petitioners in its proper prospective. Further once the Tribunal had accepted the contention of the petitioners that the deceased was coolie, it ought to have granted compensation in accordance with law by taking into consideration of the average wage of coolie. In such circumstances the income fixed by the Tribunal is not in accordance with law and the same requires the interference of this Court. Accordingly for the reasons recorded *supra,* the income of the deceased is fixed as Rs.6,000/- per month. Since the amount awarded by the Tribunal is not tune with the judgment of the Hon'ble Apex Court in the case of ***"National Insurance***

Company Vs. Pranay Sethi*[1]*" the same is being computed as under :

Description of the Head	**Amount Entitled in Rupees**
Net Annual Income	Rs.6000x12=Rs.72,000/-
Future Prospects (at the age of 16 years)	Rs.28,000/- (i.e., 40% of the Income)
Total Income	Rs.1,00,800/-
Deduction towards personal expenditure	Rs.50,400/- (i.e., 50%)
Total Annual Loss of Dependency	Rs.50,400/-
Multiplier of 18 for the age 16 years	Rs.50,400/-x18 = Rs.9,07,200/-
Conventional Heads:	
(i)Loss of consortium (2 claimants)	Rs.40,000/-x2 = Rs.80,000/-
(ii)Loss of Estate	Rs.15,000/-
(iii)Funeral Expenses	Rs.15,000/-
Total Compensation	Rs.10,17,200/-

[1] 2017 16 SCC 680

10. At that juncture the counsel for the appellant/insurance company raised objection stating that in the absence of appeal preferred by the claimants, they are not entitled to receive compensation more than what has been sought for. In this regard it is pertinent to note that the Courts are duty bound to award just compensation to the victims, especially while dealing with the matters arising under beneficial legislation. Further, the said view is fortified by judgment rendered by this Court in MACMA No.945 of 2013.

11. In such circumstances the objection raised by the counsel for the appellant in this regard cannot be countenanced and accordingly the same is rejected. For the reasons mentioned above, there are no merits in the present appeal and accordingly the same is dismissed. However, the appellant insurance company is directed to pay the enhanced compensation Rs.10,17,200/- together with the interest @ 7.5% per annum to the petitioners/claimants from the date of petition to the date of realization. The said amount is directed to be paid within a period of 2 months from the date of receipt of copy of this order.

Needless to mention any amount already deposited may be deducted.

As a sequel, interlocutory applications pending, if any shall stand closed.

T.C.D.SEKHAR, J

24.04.2026
CMK