THE HON'BLE SRI JUSTICE M.GANGA RAO

AND

THE HON'BLE SRI JUSTICE V.SRINIVAS

M.A.C.M.A.No.263 of 2018

JUDGMENT: (per Hon'ble Sri Justice V.Srinivas)

This appeal is directed against the judgment dated 09.08.2017 in M.V.O.P.No.449 of 2015 passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Additional District Judge, Kadapa (hereinafter called as 'the Tribunal')

2. The appellant is the insurer of car bearing No.AP 28 CD 2337 belonging to the 6th respondent herein. Respondent Nos.1 and 2 herein are parents of the deceased by name Maram Kiran Kumar Reddy, respondent Nos.3 to 5 herein are the owner, driver and insurer of lorry bearing No.AP 04 T 0948.

3. According to the claimants, on 13.02.2011 at about 03.30 p.m. near Naravari Rahadari turning on a road running from Chittoor to Kurnool, N.H.18 in between Piler and Kallur of Pulicherla Mandal, when the deceased along with his friends was proceeding in verna car bearing No.AP 28 CD 2337, the driver of lorry bearing No.AP 04 T 0948 came in opposite direction with sugarcane load at high speed in a rash and negligent manner and hit the said car. As a result of which, spark ignited in the engine of car, which caught hold fire on the spot and the inmates of the car

also died on the spot. At the time of accident, the deceased was aged about 25 years and working as Marketing Manager at Rajiv Country Club, Hyderabad and earning Rs.25,000/- per month. Being dependents, the claimants filed petition under the Motor Vehicles Act claiming compensation of Rs.10,00,000/- against drivers, insurer and insured of both the vehicles.

4. Counter was filed by the insurer of lorry denying all the material allegations stating that the policy issued to the lorry was in force at the time of accident and that the accident occurred due to rash and negligent driving of the driver of the car and hence, it is not liable to pay compensation.

5. Counter was filed by the insurer of car stating that the driver of car was not holding valid driving license at the time of accident and thereby violated the terms and conditions of the policy; that the accident was occurred only due to rash and negligent driving of the driver of lorry; that the compensation claimed by the claimants is highly excessive and hence, prayed to dismiss the petition.

6. Basing on the above pleadings, the Tribunal settled the following issues:

1. Whether the deceased died in a motor vehicle accident that occurred on 13.02.2011 at 3.30 p.m. due to negligence of drivers of both vehicles i.e., car and lorry or not?
2. Whether the petitioners are entitled to any compensation, if so to what amount and from whom? and
3. To what result?

7. On behalf of the claimants, PW.1 was examined and Exs.A.1 to A.9 were marked. On behalf of insurers of lorry and car, R.Ws.1 and 2 were examined and Exs.B.1 to B.4 were marked.

8. On the material, the Tribunal, having come to the conclusion that the accident occurred due to the rash and negligent driving of the car, held that the petitioners are entitled to compensation of Rs.8,86,000/- with interest at 9% p.a from the date of petition till the date of deposit, against the estate in the hands of respondent No.4 therein and insurer of car jointly and severally and the claim against driver, owner and insurer of lorry is dismissed.

9. It is against the said judgment, the present appeal is preferred by the insurer of car.

10. Heard Sri Naresh Byrapaneni, learned Standing Counsel for the appellant/insurer of car, Sri V.Sambasiva Rao, learned Standing Counsel for insurer of lorry and Sri D.Kodanda Ramireddy, learned counsel for the claimants.

11. Learned Standing Counsel for the appellant submits that the Tribunal erred in making the appellant alone to pay the compensation when the accident occurred due to the negligence on the part of drivers of both the vehicles involved in the accident.

12. Learned Standing Counsel for the insurer of lorry submits that there was no negligence on the part of driver of lorry and that the accident was occurred only due to negligent driving of car only and hence, the insurer is not liable to pay compensation.

13. Learned counsel for the claimants submits that after considering the oral and documentary evidence, the Tribunal passed a reasoned order and this Court need not be interfered with the well reasoned order.

14. After hearing both sides, the following points that arise for determination are:

1. Whether there is any flaw in arriving the conclusion that the accident occurred solely due to the negligence on the part of the driver of car?
2. Whether the compensation awarded by the Tribunal needs interference?
3. To what relief ?

POINT NO.1:

15. In deciding the point whether there is negligence on the part of the driver of car as well driver of lorry, the Tribunal had

come to the conclusion that it is a composite negligence on the part of both the drivers. To verify the said fact, it is necessary to appreciate the evidence placed on record by both the parties before the Tribunal.

16. In the pleadings of the claim petition, the manner of accident was narrated as follows:

On 13.02.2011 at about 03.30 p.m. near Naravari Rahadari turning on Chittoor-Kurnool National Highway in between Piler and Kallur of Pulicherla Mandal, when the deceased was proceeding in a Verna Car bearing No.AP 28 CD 2337 along with his friends, when they reached Naravari Rahadari turning, at that time the driver of lorry bearing No.AP 04 T 0948 belonging to the 1st respondent came in opposite direction with a load of sugarcane with high speed in a rash and negligent manner hit against the car. As a result of which, spark ignited in the engine of car, caught hold the fire on the spot and the inmates in the car died in the accident on the spot. Thereafter, deceased were shifted to Government Hospital, Piler to conduct Post Mortem examination and according to the claimants, a case in Crime No.4 of 2011 on the file of Kallur Police Station was registered for the offences punishable under Sections 304-A, 337 and 279 I.P.C. under Ex.A1.

Copy of M.V.I.report, which was marked as Ex.A4 in M.V.O.P.No.191 of 2011 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge, Tirupati, speaks that both the vehicles were not fit for road test since they were burnt and damaged due to fire. So Motor Vehicle Inspector could not give any clue that at whose instance the accident was occurred.

In Ex.A4-photostat copy of final report, the Inspector of Police, as a part of his investigation, visited the scene of offence, examined and drafted an observation mahazar in the presence of mediators. He also took photographs of the scene of offence. He further indicated in his final report that one of the deceased by name, Harikumar, was driving car in a rash and negligent manner, dashed against the opposite sugar cane load lorry bearing No.AP 04T 0948, as a result sparks ignited from the engine and flames spread all over the car, due to central locking system of the car, the deceased along with his friends were unable to come out from the car and charred to death. He further made finding in his investigation that Chittoor-Kurnool road has been made double road completely, the drivers will have stimulation and will push the accelerator to the maximum extent showing the maximum

meter. According to the Inspector of Police, the driver of car drove it in a high speed at the deep curve without observing the opposite coming lorry and dashed, as a result the accident occurred.

17. Admittedly, the driver of car died on the spot due to burnt injuries.

18. The person, who is said to be in the lorry at the time of accident was examined as PW.2 in M.V.O.P.No.191 of 2011. In the chief examination, he stated that he engaged a lorry bearing No.AP 04 T 0948 for the purpose of transport of sugar cane from his fields to Vani Sugar Factory, Punganur. He boarded the lorry along with load of sugar cane reached at about 3.30 p.m. near Naravari Rahadari turning on Chittoor-Kurnool National Highway in between Piler and Kallur of Pulicherla Mandal. At that time, the driver of lorry driven it in a rash and negligent manner without due care and caution and suddenly on seeing the opposite coming Verna Car bearing No.AP 28 CD 2337, the driver of said lorry applied sudden break but lost control over the lorry and at that moment, the lorry skew to the right side and dashed the opposite coming verna car. Due to which, sparks ignited and fire was caught hold to both the vehicles and inmates of the car died on the spot. PW.2 and driver survived with simple injuries. He stated

that the said accident occurred only due to the rash and negligent driving of the driver of the lorry only. At the time of accident, the lorry was in motion and at the place of accident the National Highway was double road. Earlier he gave evidence in M.V.O.P.No.205 of 2011 in relating to the same accident with regard to claim of the legal heirs of owner of car and he do not know in M.V.O.P.No.293 of 2011 that accident was occurred due to negligence.

19. The Inspector of Police, who subsequently promoted as Deputy Superintendent of Police was examined as RW.3 in M.V.O.P.No.191 of 2011, who is said to be investigated the offence. In his chief examination, he stated that lorry was stationed at the extreme left side margin of the road and there was a turning near the place of accident as per rough sketch and in a turning of the road if any vehicle comes at high speed on the opposite direction, there is a possibility of hitting lorry or any other opposite vehicle. In his investigation he also examined one Beegala Rajendra (examined as PW.2 in MVOP No.191 of 2011), who stated before him that the accident was occurred due to the rash and negligent driving of the car. In the cross examination, it was elicited that there are five eye witnesses to the accident. The inmates of lorry,

owner of mango garden stated that the accident was occurred due to rash and negligent driving of driver of car. As per his investigation at the time of accident, both the vehicles were on motion. He stated that there is a possibility in difference of running speed with regard to empty lorry and lorry with a load and when he visited the place of accident, both vehicles were on the margins of the road. This is the oral evidence placed before the Tribunal.

20. The Tribunal after appreciating the evidence placed before it both oral and documentary evidence found that it is head on collision and accident occurred not only negligent driving of the driver of car but also driver of lorry and it is a contributory negligence on the part of the driver of car as well as driver of lorry. Though claimants claimed that the accident occurred due to negligent act of driver of lorry but the evidence placed on record came to the conclusion that both the drivers are contributed for the accident.

21. This Court also categorically gone through the evidence placed on record. As could be seen from the evidence of owner of sugar cane (who was examined as PW.2 in MVOP No.191 of 2011) stated that there is a negligence on the part of lorry driver.

Whereas, the driver of lorry consistently stated that the accident occurred due to negligence of driver of car. But one thing is proved from their testimonies that at the place of accident there was a turning and rough sketch also supports that fact. At the turning point, when accident occurred both the vehicles dashed each other rather head on collision, which is nothing but a contributory negligence on the part of drivers of both the vehicles. When head on collision taken place, the extent of negligence can be taken as 50-50 because it was case of composite negligence also.

22. As there is a common error committed by both the drivers at the time of accident, the composite negligence is well discussed in **T.O.Anthony v. Karvarnan**[1]**,** in which it was found that the injured need not establish the extent of responsibility of each wrongdoer separately, nor is necessary for the court to determine the extent of liability of each wrongdoer separately. In the said judgment, the Hon'ble Supreme Court while discussing the composite negligence held that *"'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the*

[1] 2008(3) TAC 193(SC)

composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence. Further contended that *when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for*

the accident and the extent of his responsibility, that is his contributory negligence.

23. So from the above legal proposition, this Court is also of the opinion that both the drivers of lorry and car are jointly liable for the accident as is observed above that the evidence of driver of lorry and the Inspector of Police coupled with the copies of photographs, which were filed in MVOP No.191 of 2011 clearly show that due to impact of head on collision, both vehicles have burnt and inmates of the car four in number burnt and died on the spot. The manner in which accident occurred coupled with the evidence of the person, who was said to be in the lorry at the time of accident clearly shows that the accident was occurred due to composite negligence of the driver of lorry and driver of car, who also died in the accident. Unless both the drivers were negligent, the impact of accident would not be happened and apportioning of both the vehicles, which includes lorry, which admittedly goods carriage vehicle. Therefore, this Court warrants interference with the finding of the Tribunal since there is a composite negligence of both the drivers.

24. **POINT NO.2**:

On verifying the record placed before the Tribunal, the Tribunal considered the age of the deceased as 25 years on the date of accident basing on Ex.A2-inquest report and Ex.A3-postmortem certificate of the deceased. Hence, the Tribunal applied the relevant multiplier '18'. As there is no documentary evidence pertaining to the income of the deceased, the Tribunal rightly taken into consideration the minimum income of the deceased as Rs.7,000/- per month and Rs.84,000/- p.a.

25. As per the decision of the Constitution Bench of the Apex Court in ***National Insurance Company Limited v. Pranay Sethi***[2], the deductions towards personal and living expenses of the deceased, held at Paragraph No.39 as follows:

> *39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, Sarla Verma lays down:-*
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> > *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra4, the*

[2] 2017 (6) ALT 60 (SC)

general practice is to apply standardised deductions. Having considered several subsequent decisions of this (2003) 3 SLR (R) 601 Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

26. As per Pranay Sethi's case(referred to supra), by fortifying ***Sarla Verma v. Delhi Transport Corporation***[3]**,** while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

27. In the present case, as per the above said decision 50% of actual salary has to be added to the income of the deceased towards future prospects, as the victim is in the age group below the age of 40 years. After adding 50% to the income of the deceased towards future prospects his income is determined at Rs.1,26,000/-p.a.(Rs.84,000/- p.a. + Rs.42,000/-).

28. In the case on hand, since the deceased is bachelor as per the ratio laid down in the above said Apex Court's judgment, 50% has to be deducted from the income of the deceased towards personal and living expenses. Then the quantum is determined as Rs.63,000/- p.a.

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[3] 2009 ACJ 1298

29. Regarding just compensation, in a decision of Hon'ble Supreme Court between ***Sandeep Khanuja vs Atul Dande & Anr***[4], at Paragraph Nos.11 and 12 held as follows :

> *11……it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident……..*
> *12…… While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be…….*
> *……. there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of 'just' compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country."…….*

30. The appropriate multiplier applicable to the age of the deceased i.e., 25 years is **18.** The total loss of dependency is determined at Rs.11,34,000/- p.a. (Rs.63,000/- p.a. x 18). Apart from that as per the decision of the Constitution Bench of the Apex Court in ***Pranay Sethi's*** case (referred to supra)**,** an amount

[4] 2017 (3) SCC 315

Rs.15,000/- towards funeral expenses and **Rs.15,000/-** towards love and affection are awarded. In total, the claimants are entitled compensation of **Rs.11,64,000/-**.

31. A brief exposition of the calculation made to arrive at the compensation is set out infra:

S.No.	Heads	Calculation
1	The annual income of the deceased	Rs.84,000**/- p.a**
2	50% of above(1) to be added as future prospects	**Rs.1,26,000/-** (Rs.84,000/- + Rs.42,000-)
3	50% to be deducted as personal expenses of deceased.	**Rs.63,000/-.**
4	Compensation arrived at on application of multiplier 18.	**Rs.11,34,000/-** (**Rs.63,000/-**x 18)
5	Loss of estate	**Rs.15,000/-**
6	Funeral expenses	**Rs.15,000/-**
	Total compensation awarded(Rows 4+5+6)	**Rs.11,64,000/-**

32. In view of the forgoing discussion, we are of the opinion that the contention of the learned counsel for the appellant that the

Tribunal grossed erred in awarding compensation does not hold water since the Tribunal awarded compensation of Rs.8,86,000/- rather than Rs.11,64,000/-**.** Hence, this Court is not inclined to interfere with the compensation awarded by the Tribunal.

33. Further, the contention of the learned counsel for the appellant is that the Tribunal grossly erred in awarding rate of interest at 9% p.a. Hence, it is appropriate to award rate of interest at 7.5% p.a. as per the principle laid down in ***Tamil Nadu State Transport v. S.Rajapriya***[5].

34. **POINT No.3**:

In view of our findings on Point Nos.1 and 2, the order passed by the Tribunal warrants interference with regard to apportionment of liability to pay compensation to the claimants, the quantum of compensation and interest awarded by the Tribunal and with regard to the remaining aspects, there is no need to disturb the well articulated order passed by the Tribunal.

35. In the result, the present appeal is allowed in part by apportioning the liability equally between the insurers of both the vehicles i.e., car and lorry. Thus, the appellant is liable to pay to the claimants an amount of Rs.4,43,000/- with interest at 7.5% per

[5] 2005 Law Suit SC 742

annum with proportionate costs from the date of petition till the date of realization. The appellant shall deposit the compensation amount within two months from the date of this judgment as per the apportionment made above. Rest of the directions given by the Tribunal shall remain unaltered.

36. The impugned order of the Tribunal stands modified to the aforesaid extent and in the terms and directions as above.

37. Interim orders granted earlier if any, stand vacated.

38. Miscellaneous petitions pending if any, stand closed.

M.GANGA RAO, J

V.SRINIVAS, J

Date: 23.02.2023
Pab/krs

THE HON'BLE SRI JUSTICE M.GANGA RAO

AND

THE HON'BLE SRI JUSTICE V.SRINIVAS

M.A.C.M.A.No.263 of 2018

DATE: .01.2023

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