IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA

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M.A.C.M.A.No.1680 of 2010

Between:

Maroju Sarojana and Others

...Appellants

And

R. Kumar and another

...Respondents

JUDGMENT PRONOUNCED ON: 07.02.2024

THE HON'BLE SRI JUSTICE K. SURENDER

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : **Yes/No**

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : **Yes/No**

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes/No**

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K.SURENDER, J

THE HON'BLE SRI JUSTICE K. SURENDER

M.A.C.M.A.No.1680 of 2010

%07.02.2024

Maroju Sarojana and Others

...Appellant

VERSUS

$ R. Kumar and another

...Respondents

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> HEAD NOTE:

!Counsel for Appellant: Sri T. Vishwarupa Chary

^Counsel for Respondent No.2: Sri Kondadi Ajay Kumar

? Cases referred

1. (2021) 1 SCC 171
2. LAWS (SC)-2023-8-110
3. 2017 ACJ 1298 (SC)
4. 2009 ACJ 1298 (SC)
5. (2018) 18 SCC 130
6. (2011) 10 SCC 756
7. 2003 ACJ 12 (SC)

THE HONOURABLE SRI JUSTICE K.SURENDER

M.A.C.M.A.No.1680 OF 2010

JUDGMENT:

This Motor Accident Civil Miscellaneous Appeal has been filed by the appellants-petitioners under Section 173 of the Motor Vehicles Act, 1988 assailing the order, dated 30.04.2010 passed in O.P.No.79 of 2008 by the learned Motor Vehicles Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court at Hyderabad.

2. The appellants are aggrieved by the refusal of the Tribunal in granting compensation. The case of the claimants is that on 27.09.2007 while the deceased, who is the husband of appellant No.1 and father of appellant Nos.2 to 4 and son of the appellant No.5 going on motor cycle, another motor vehicle came from behind and hit him, due to which the deceased fell down on the road and he was taken to the hospital after PW2/D. Dharmaiah called 108-Ambulance. While undergoing treatment, the deceased died in the hospital on 01.10.2007 post mortem report as well as inquest was conducted on 02.10.2007.

3. In the inquest report it was mentioned that PW2/D. Dharmaiah was the person, who had called for help by calling 108-Ambulance and pursuant to which Ambulance had arrived and taken the deceased to the hospital.

4. The learned trial Court Judge found that PW2 had not lodged any complaint with the police for which reason his evidence is doubtful. Further, the FIR was lodged (4) days after the accident and the FIR do not contain the details of registration number of the vehicle and also the person, who was riding the said vehicle. However, the person, who caused the accident was identified after (2) months. On the said basis, the Tribunal found that no reliance can be placed on the documents produced by the claimants. Accordingly, refused to grant any compensation.

5. Learned counsel for the appellants would submit that the Tribunal had committed an error in holding that the belated version of causing accident by a two wheeler is incorrect. In fact, the inquest report name of PW2 was mentioned as the person, who had called the ambulance and the deceased was sent to the hospital.

6. On the other hand, learned counsel appearing for the Insurance Company supported the findings of the Tribunal.

7. The Hon'ble Supreme Court in ***Anitha Sharma and Others vs. New India Assurance Company Limited and Another***[1] held that:-

> (*16). It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to the police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW3 to lodge a report once again to the police at a later stage either.*
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> *(17). Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State. Close to the facts of the case in hand, this Court in* ***Parmeshwari v. Amir Chand*** viewed that: (SCC p.638, para-12).
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> "12. *The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen. Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets*

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[1] (2021) 1 SCC 171

> *medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat out observation that the total approach of the High Court, unfortunately, was not sensitized enough to appreciate the plight of the victim.*
>
> *'15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.*"

8. The case is of the hit and run. At the earliest point of time, it was informed by PW2 that an accident occurred and called 108 for Ambulance. Even in the inquest report, which was marked as Ex.A2, it is specifically mentioned that PW2 was present at the scene. Thereafter, on the death of the deceased, the FIR was lodged. The delay in lodging the FIR cannot be found fault with since the deceased was undergoing treatment and upon his death, the FIR was lodged. The investigation which was done by the police revealed that the accused had committed the accident and he was accordingly charge sheeted which is filed under Ex.A4. No case is filed by the Insurance Company that false evidence is given by PW2.

9. In the present facts, only for the reason of the vehicle being identified two months later and also the driver who had caused accident, the same cannot form basis to refuse compensation. The circumstances in the present case clearly make out that the accident was in fact caused by the accused on the said date. Delay in identifying the hit and run vehicle and the driver cannot come in the way of granting compensation.

10. The ground raised by the learned counsel appearing for the Insurance Company is that the vehicle number was not intimated in the F.I.R by PW2 and in the present circumstances cannot form basis to grant compensation. The said ground cannot be accepted. This Court, believes on the basis of the inquest report and the charge sheet that, it is the accused, who had committed the accident, resulting the death of the deceased.

11. According to claimants, the deceased was earning Rs.6,000/- per month working as carpenter. The Hon'ble Supreme Court in ***Kunta Devi and others vs. Bhura Ram***

and Another[2] held that; the notional income of carpenter would be Rs.10,000/- per month. Apart from the same, the claimants are also entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[3]. Therefore, monthly income of the deceased comes to Rs.8,400/- (Rs.6,000/- + Rs.2,400/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following ***Sarla Verma v. Delhi Transport Corporation***[4] as the claimants are five in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.6,300/- per month and Rs.75,600/- per annum. Since the age of the deceased was 35 years at the time of the accident, the appropriate multiplier is '16' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation (3 supra)***. Adopting multiplier '16', the total loss of dependency would be Rs.75,600/- x 16, which comes to Rs.12,09,600/-. The

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[2] LAWS (SC0-2023-8-110
[3] 2017 ACJ 2700
[4] 2009 ACJ 1298 (SC)

claimants are also entitled to consortium of Rs.40,000/- each in the light of the judgment of the Apex court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***[5] ***.*** Further, the claimants also entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate as per **Pranay Sethi**'s case (2 supra). Thus, in all the claimants are entitled to Rs.14,39,600/-.

12. At this stage, the learned Standing Counsel for the Insurance Company submits that the claimants claimed only a sum of Rs.4,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

13. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[6] and ***Nagappa Vs. Gurudayal Singh***[7] the claimants are

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[5] (2018) 18 SCC 130
[6] (2011) 10 SCC 756
[7] 2003 ACJ 12 (SC)

entitled to get just compensation even if it is more than the amount what was claimed by the claimants.

14. Accordingly, M.A.C.M.A. is allowed by awarding compensation of Rs.14,39,600/- to the petitioner together with interest at 7.5% per annum from the date of petition till the date of realization. Respondent Nos.1 and 2 are jointly and severally liable to pay the said compensation and they are directed to deposit the entire amount within a period of two months from today. Out of the said amount, petitioner No.1 is entitled to Rs.4,39,600/- and petitioner Nos.2 to 5 are entitled to Rs.2,50,000/- each along with interest. On such deposit, the major claimants are permitted to withdraw their respective shares without furnishing any security. There shall be no order as to costs.

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

K.SURENDER, J

Date: 07.02.2024
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