

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.867 OF 2009

JUDGMENT:

This appeal is filed by the insurance company challenging the judgment and award dated 13.3.2008 passed in O.P. No.1138 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District, N.T.R. Nagar, wherein and whereby the Tribunal while awarding an amount of Rs.4,94,000/- towards compensation to the petitioners as against the claim of 5,00,000/- fastened the liability on the insurance company.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 25.9.2006 at about 3.00 PM, B.Laxmi (hereafter referred to as, the deceased) after getting down RTC bus in Chityala, was proceeding towards her relatives' house. At that time, the driver of lorry bearing No.AP 22V 2666 came from Shadnagar side in a rash and negligent manner and hit the deceased. The Station House Officer, Pargi Police Station registered a case in Crime No.180 of 2006 under Section 337 IPC. Due to the accident, the deceased sustained grievous injuries on various parts of her body. Immediately after the accident, the deceased was shifted to the Area Hospital, Parigi. The Doctors advised to take the deceased to Osmania General Hospital, Hyderabad and on the way the deceased succumbed to the injuries. By the time of death, deceased was aged 30 years and used to earn Rs.4,000/- per month by attending to coolie work. The first petitioner is the husband, petitioner Nos.2 and 3 are minor children of the deceased. The petitioners are dependants on the income of the deceased. Hence, the petition is filed claiming compensation of Rs.5,00,000/-. Lorry bearing No.AP 22V 2666, which belongs to the

first respondent, was insured with the second respondent with effect from 14.9.2006 to 13.9.2007. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

4. The first respondent remained ex parte. The second respondent filed counter denying all the material averments made in the petition inter alia contending that the accident occurred due to rash and negligent act of the deceased and there was no negligence on the part of the driver of the lorry bearing No.AP 22V 2666. The driver of the lorry was not having valid and effective driving licence as on the date of the accident and therefore, the second respondent is not liable to pay compensation to the petitioners. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant.

5. Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the pleaded accident was occurred resulting the death of B.Laxmi due to rash and negligent driving of lorry by its driver?
- 2) Whether the petitioner is (*sic*, petitioners are) entitled for compensation, if so, how much amount and from which respondent?
- 3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of the second respondent, no oral evidence was adduced but Ex.B1 was marked.

7. On appraising the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 22V 2666 and allowed the petition in part by awarding compensation of Rs.4,94,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of

payment, directing the respondent Nos.1 and 2 to pay the amount within two months. Feeling aggrieved by the judgment and award, the second respondent – insurance company preferred the appeal.

8. Sri P.Phalguna Rao, learned counsel for the appellant-insurance company submitted that the Tribunal ought to have taken the age of the first petitioner to determine the multiplier. He further submitted that the Tribunal has not applied correct multiplier while determining the loss of dependency. **Per contra**, Sri Mirza Safulla Baig, learned counsel for the claimants submitted that the quantum of compensation awarded by the Tribunal is just and reasonable and there are no grounds to interfere with the same.

9. Now, the points that arise for consideration in this appeal are:

(1) Whether the Tribunal has committed any error in determining the appropriate multiplier?

(2) Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?

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POINT NOs.1 and 2:

10. Both the points are interlinked with each other and hence, I am inclined to address both the points simultaneously in order to avoid repetition.

11. There is no dispute between the parties with regard to the manner of accident and the factum of death of the deceased. As per the findings of the Tribunal on issue No.1, the accident occurred due to the rash and negligent driving of the driver of the lorry, which resulted in death of the deceased. The Tribunal has given cogent and valid reasons to its findings on issue No.1. I am fully agreeing with the finding and there are no grounds much less valid grounds to interfere with the finding of the Tribunal on issue No.1.

12. The deceased is wife of the first petitioner and mother of petitioner Nos.2 and 3. By the time of death, the deceased was aged about 28 years and the age of the first petitioner was 35 years. Learned counsel for the appellant submitted that the Tribunal ought to have taken the age of the husband and not the deceased to determine the appropriate multiplier. As observed earlier, the deceased is the wife of the first petitioner. Suffice it to say, in case of death of married person, the Tribunal has to take into consideration the age of the deceased to determine the appropriate multiplier. Even as per the principle enunciated in **Sarla Verma v DTC**^[1], the Tribunal has to take into consideration the age of the deceased while determining the appropriate multiplier. Having regard to the facts and circumstances of the case and also the principle enunciated in **Sarla Verma**, the contention raised by the learned counsel for the appellant has no legs to stand.

13. The Tribunal, after taking into consideration the material available on record, assessed the monthly income of the deceased as Rs.3,000/- per month. It is not uncommon for womenfolk in poor families to attend coolie work besides attending household duties. The services rendered by a housewife cannot be counted in terms of money. Viewed from any angle, the deceased may earn Rs.3,000/- per month by attending coolie work as well as attending domestic work. After deducting 1/3rd of the income towards personal expenses of the deceased, her contribution to the family would come to Rs.2,000/- per month and Rs.24,000/- per annum.

14. The Tribunal has applied the multiplier '18'. As per the principle enunciated in **Sarla Verma**, appropriate multiplier for the age group of 25 – 30 years is '17'. The Tribunal has committed error while applying the multiplier '18'. By applying the appropriate multiplier '17', compensation payable to the petitioners towards loss of dependancy

comes to (Rs.24,000 X 17) Rs.4,08,000/-. The Tribunal has rightly awarded Rs.25,000/- towards loss of love and affection, Rs.20,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. The quantum of compensation awarded under the above heads is fair, just and reasonable. The petitioners are entitled to Rs.4,70,000/- towards compensation. After applying the correct multiplier '17', the total compensation for which the petitioners are entitled to is reduced by Rs.24,000/-. Accordingly, these points are answered.

15. In the result, the appeal is allowed in part, reducing the quantum of compensation from Rs.4,94,000/- to Rs.4,70,000/-. Reduced quantum of compensation of Rs.24,000/- shall be deducted from the share of first petitioner and he is entitled to Rs.1,20,000/- instead of Rs.1,44,000/-. The respondent Nos.1 and 2 shall pay the compensation with proportionate costs and interest at 7.5% per annum from the date of the petition till realization. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 25.02.2015

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^[1] (2009) 6 SCC 121