THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1099 OF 2009

JUDGMENT:

This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 17.11.2008, passed in O.P.No.1287 of 2006 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 31.03.2006 at about 4:00 PM, Md.Siraj was proceeding towards Police Control room on Pulsar vehicle bearing No.
AP 09 ED-T/R-3696 and when he reached near ICICI Bank opposite to Assembly Hall, the driver of the Lorry bearing No.
AP 29 T 9143 had driven the same in a rash and negligent manner and hit the motorcycle of Md.Siraj. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, Saifabad Police Station registered a case in Crime No.166 of 2006 for the offence punishable under Section 304-A I.P.C. Due to accident, Md.Siraj (hereinafter referred to as 'the deceased) received injuries and died on the same day. By the time of accident, the deceased was aged about 31 years and used to earn Rs.10,000/- per month by running a meat shop. The petitioners are dependants on the income of the deceased. The lorry, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company with effect from 05.01.2006 to 04.01.2007. Therefore, respondent Nos.1
and 2 are jointly and severally liable to pay compensation of Rs.10,00,000/- to the petitioners.

4. Respondent No.1 filed counter denying all the averments made in the petition *inter alia* contending that the lorry was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent No.2 alone is liable to

pay compensation, if any, to the petitioners. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Respondent No.2 filed counter denying the averments made in the petition *inter alia* contending that this respondent is not liable to pay compensation as per the terms and conditions of the insurance policy. The accident occurred due to the rash and negligent driving of the motorcycle by the deceased and there was no negligence on the part of the driver of the lorry. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the accident resulting in death of Md.Siraj occurred owing to the rash and negligent driving of the lorry bearing No.AP 29 T 9143?

2. Whether the petitioners are entitled for compensation? If so to what amount and from whom?

3. To what relief?

7. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.9 were marked. On behalf of the respondents, RW.1 was examined and Exs.B.1 to B.3 were marked.

8. Basing on the oral, documentary evidence and other material 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 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.4,58,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit.

9. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

10. Heard Sri Y.Nagaiah, the learned counsel for the petitioners (appellants), Sri R.A.Achuthanand, the learned counsel for respondent No.1 and Sri J.Ravi Shankar, the learned Standing Counsel for respondent No.2 – National Insurance Company Limited.

11. The contention of the learned counsel for the petitioners is two fold: (1) The Tribunal, having held that the deceased was a business man, ought to have determined the income of the deceased as Rs.10,000/- per month, and (2) The amount of compensation awarded by the Tribunal under various heads is not just and reasonable.

12. Per contra, the learned counsel for respondent Nos.1 and 2 submitted that the Tribunal has awarded just and reasonable compensation.

13. Now the point that arises for consideration in this appeal is:

> Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?

<u>Point:</u>

14. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased. The finding recorded by the Tribunal on issue No.1 became final in view of non-filing of appeal or cross objections by the respondents. The Tribunal has assigned cogent and valid reasons to its finding. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased.

15. The material available on record clinchingly establishes that the deceased was aged about 31 years by the time of accident. The Tribunal has taken the multiplier '17'. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation,** the appropriate multiplier to be taken for the age group of 31 to 35 years is '16'. The Tribunal has not taken the correct multiplier. As per the testimony of PW.1, the deceased used to earn Rs.10,000/- per month by running the meat

shop. Ex.A.8 – Photostat copy of rental agreement is no way helpful to the petitioners to prove the avocation and income of the deceased. Except the self-served testimony of PW.1, there is no other convincing evidence to prove the income of the deceased. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. Taking into consideration the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.4,000/- per month even by attending coolie work or running a meat shop. As per the principle enunciated in **Sarla Verma**'s case (supra 1), the Tribunal has to deduct $1/4^{th}$ if the claimants are 4 to 6 in number. In the instant case, the claimants are six in number. The Tribunal has deducted $1/3^{rd}$ towards personal expenses of the deceased instead of $1/4^{th}$. The deceased may contribute Rs.3,000/- per month to his family members. The loss of dependency comes to Rs.5,76,000/-
(3,000 X 12 X16) instead of Rs.4,08,000/- as determined by the Tribunal. The Tribunal has rightly awarded an amount of Rs.50,000/- towards conventional damages. Thus, the amount of compensation to which the petitioners are entitled to under both the heads is as follows:

01.	Loss of dependency	Rs.5,76,000/-
02.	Conventional damages	Rs. 50,000/-
	Total:	Rs.6,26,000/-

16. Petitioner Nos.2 and 3 are equally entitled for the enhanced amount of Rs.1,68,000/-. Respondent No.1 being the owner of the lorry is vicariously liable for the wrongful acts done by his driver during the course of employment. The lorry was insured with respondent No.2 under Ex.B.1 – insurance policy as on the date of accident. Therefore, respondent No.2 has to indemnify the liability of respondent No.1. Therefore respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

17. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.4,58,000/- to Rs.6,26,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit. Respondent Nos.1 and 2 are

jointly and severally liable to pay compensation to the petitioners. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 31.03.2015

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