

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1588 OF 2009

JUDGMENT:

This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 01.03.2007 passed in O.P.No.314 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Ongole (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 22.03.2004, one Duddela Khasim Saidulu (hereinafter referred to as 'the deceased') was proceeding on the road in the meanwhile, the driver of the bus bearing No.PY-01U-3385 had driven the same in a rash and negligent manner and hit the deceased. The Station House Officer, Santhamaguluru registered a case in Crime No.31 of 2004 for the offence punishable under Section 304-A I.P.C. against the driver of the bus. Due to accident, the deceased sustained grievous injuries on various parts of the body and died on the spot. By the time of accident, the deceased was aged about 35 years and used to earn Rs.4,000/- per month as vegetable vendor. The petitioners are dependants on the income of the deceased. The bus which belongs to respondent No.1 was insured with respondent No.2 – Insurance Company with effect from 27.04.2004 to 26.04.2005. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioners. Hence, the petition.

4. Respondent No.1 filed written statement *inter alia* contending that there was no rashness or negligence on the part of the driver of

the bus. It is further contended that the bus which involved in the accident was duly insured with respondent No.2 – Insurance Company as on the date of accident and therefore, respondent No.2 alone is liable to pay compensation, if any, to the petitioners. This respondent sold the bus long back. 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 written statement denying all the averments made in the petition *inter alia* contending that the petitioners falsely implicated the bus in order to claim compensation from this respondent. 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 petitioners are entitled to seek compensation from the respondents?

(2) If so, at what rate they are entitled?

(3) To what relief?

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7. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, RW.1 was examined and Exs.B.1 and B.2 were marked.

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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 bus and allowed the petition in part by awarding compensation of Rs.1,79,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation directing respondent Nos.1 and 2 jointly and severally to pay the compensation to the petitioners with a

liberty to respondent No.2 to recover the same from respondent No.1.

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

10. Heard Sri N.Madhava Rao, the learned counsel for the appellants/petitioners, Sri Venkateswarlu Sanisetty, the learned counsel for respondent No.1 and Sri Ch.Venkata Narayana representing Sri B.Devanand, the learned Standing Counsel for respondent No.2 – New India Assurance Company Limited.

11. The contention of the learned counsel for the petitioners is two fold: (1) The Tribunal has not considered the monthly income of the deceased in right perspective, 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. Therefore, the appeal is liable to be dismissed.

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

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

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Point:

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14. The Tribunal has given a specific finding that the accident occurred due to the rash and negligent driving of the driver of the bus, which resulted in the death of the deceased. The finding recorded by the Tribunal on this aspect became final in view of non-filing of the appeal by respondent Nos.1 and 2. 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 bus which resulted in the death of the deceased.

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15. As per the recitals of Exs.A.2 – inquest report and A.3 – Post-mortem Certificate, the deceased was aged about 35 years by the time of accident. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation** ^[1], the appropriate multiplier to be taken for the age group of 31 to 35 years is ‘16’. The Tribunal committed error while taking the multiplier as ‘17’. The appropriate multiplier applicable in this case is ‘16’ only. As per the oral testimony of PWs.1 and 2, the deceased used to earn Rs.4,000/- per month as vegetable vendor. Except the self-served testimony of PWs.1 and 2, there is no other convincing evidence to prove the income of the deceased. It may not be possible for the rustic villagers to produce documentary 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. The Tribunal has taken the income of the deceased as Rs.15,000/- per month in view of Second Schedule to Section 163-A of the Motor Vehicles Act, 1988 (for short, ‘the Act’). The Tribunal can take notional income of the deceased if he was not an earning member by the time of accident. In the instant case, the deceased was an earning member by the time of accident. This aspect has not considered by the Tribunal in right perspective. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.3,000/- per month even by attending coolie work. The total claimants in this case are four in number. If the number of claimants are 4 to 6, the Tribunal has to deduct 1/4th towards personal expenses of the deceased in view of the principle laid down in **Sarla Verma’s** case (supra 1). The Tribunal deducted 1/3rd towards personal expenses of the deceased, which is not sustainable. Therefore, this Court inclined to deduct 1/4th towards personal expenses of the deceased which comes to Rs.2,250/- (3000-

750). The loss of dependency comes to Rs.4,32,000/- (2,250 X 12 X 16). The Tribunal has not awarded just and reasonable compensation under the head of ‘loss of dependency’. The petitioners filed the petition under Section 163-A of the Act. Therefore, the Tribunal has rightly awarded an amount of Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows: _____

01.	Loss of dependency	Rs.4,32,000/-	-
02.	Loss of consortium	Rs. 5,000/-	_____
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03.	Loss of estate	Rs. 2,500/-	-
04.	Funeral expenses	Rs. 2,000/-	-
-	Total:	Rs.4,41,500/-	-

_____ The amount of compensation awarded under various heads is just and reasonable to meet the ends of justice.

16. In the result, the Appeal is allowed by enhancing the quantum of compensation from Rs.1,79,500/- to Rs.4,41,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Petitioner No.1 alone is entitled for the entire enhanced amount of compensation. Respondent Nos.1 and 2 are jointly and severally directed to deposit the compensation amount within two (2) months from the date of receipt of a copy of this judgment. However, respondent No.2 is entitled to recover the amount from respondent No.1 after satisfying the award amount. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 18.03.2015

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