

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.915 of 2009

JUDGMENT:

1 Dissatisfied with the compensation awarded in the judgment and award dated 02.12.2008 passed in M.V.O.P.No.38 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, the claimants filed the present appeal seeking higher compensation.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

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

4 On 30.04.2005 at about 9.45 a.m, the deceased by name Yadav Sunitha was proceeding on her Bajaj scooter bearing No.AP-25-J-3272 along with her son from Padgal to Ummeda village and when she reached Oddera colony on the outskirts of Perkit village, the driver of the auto bearing No.AP-25-U-7728 came from Perkit side in a rash and negligent manner and hit the motorcycle of the deceased. The accident occurred due to the rash and negligent driving of the driver of the auto against whom the Station House Officer, Armour registered a case in Cr.No.97 of 2005 for the offences punishable under Sections 304-A and 337 of IPC. Due to the injuries sustained in the said accident, the deceased died. By the date of accident, the deceased was aged 38 years and was earning Rs.10,000/- p.m and that the petitioners are dependants on the income of the deceased. The auto bearing No.AP-25-U-7728 which belongs to the first respondent was insured with the second respondent as on the date of accident. Hence the respondents 1 and 2 are jointly and severally liable to

pay compensation to the petitioners. Hence the petitioners filed the petition seeking compensation of Rs.6.00 lakhs from the respondents.

5 First respondent (owner of the auto bearing No.AP-25-U-7728) remained ex parte. Second respondent-insurance company filed written statement denying the material averments made in the claim petition inter alia contending that the accident occurred due to the rash and negligent driving of the scooter by the deceased and that there was no rash or negligent act on the part of the driver of the auto. It is the duty of the petitioners to prove that the driver of the auto was having valid and effective driving licence as on the date of accident. It is further contended that the amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident has taken place due to rash and negligent driving of auto bearing No.AP-25-U-7728 by its driver?
- ii. Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents R.W.1 was examined and Ex.B.1 was marked.

8 Having appreciated 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 auto bearing No.AP-25-U-7728

and awarded compensation of Rs.4,04,000/- with interest at 9% p.a. from the date of filing of petition till the date of realisation and directed the respondent Nos.1 and 2 to pay the same to the petitioners jointly and severally. Not being satisfied with the compensation awarded, the petitioners filed the present appeal seeking higher compensation.

9 Sri M. Rajamalla Reddy , the learned counsel for the petitioners submitted that the Tribunal has not rightly considered the income of the deceased and awarded meagre amount of compensation. He further submitted that the Tribunal has not awarded just and reasonable compensation towards consortium and loss of estate.

10 The respondent Nos.1 and 2 having received notices, did not choose to appear before this Court. Hence I am inclined to pass orders on merits.

11 Now the point that arises for consideration in this appeal is

“Whether the Tribunal has awarded just and reasonable compensation to the petitioners?”

12 As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-25-U-7728. The respondents did not file appeal or cross objections challenging the finding of the Tribunal on issue No.1. The oral testimony of P.W.1 that the accident occurred due to the rash and negligent driving of the driver of the auto is fully supported by the recitals of Ex.A.1-FIR and Ex.A.2-charge sheet. The Tribunal has assigned cogent and valid reasons to its finding 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 auto by its driver.

13 Basing on the oral and documentary evidence available on record, the Tribunal came to the conclusion that by the date of accident the deceased was aged about 38 years and applied multiplier 16. As per the ratio laid down in **Sarla Verma Vs. Delhi Transport Corporation** ^[1], for the age group of 36 to 40, the appropriate multiplier is 15. However, as the insurance company has not filed appeal on this aspect, I am not inclined to reduce the multiplier from 16 to 15.

14 The material available on record clinchingly establishes that the petitioners did not adduce evidence much less cogent and convincing evidence to establish the income of the deceased. Mere taking a plea in the petition itself is not a sufficient proof of income of the deceased. Even though the petitioners failed to prove the income of the deceased, the Tribunal, taking into consideration the principle laid down in **Nagarapu Balaiah and Others vs. K.Venugopal & Another** ^[2] determined the income of the deceased, who is a housewife, as Rs.3,000/- The O.P. was filed in the year 2005. So, the Tribunal has rightly considered the material available on record and arrived at a conclusion that a housewife can contribute Rs.3,000/- p.m. to her family members in the year 2005. The Tribunal has rightly deducted 1/3rd of the same towards personal expenses of the deceased. Viewed from any angle, I am of the considered view that the Tribunal has not committed any error in determining the loss of dependency. Thus, the Tribunal has rightly awarded an amount of Rs.3,84,000/- to the petitioners towards loss of dependency. The Tribunal has

also awarded an amount of Rs.15,000/- towards consortium and Rs.5,000/- towards funeral expenses. However, In view of the principle laid down by the apex Court in **Ramilaben Chinubhai Parmar and Others Vs. National Insurance Co. & Others**^[3], I am inclined to award an amount of Rs.50,000/- as conventional amount to the petitioners instead of amount under different heads as awarded by the Tribunal.

15 Thus, in all, the amount of compensation to which the petitioners are entitled, under various heads, is as follows:

<u>Loss of dependency :</u>	<u>Rs.3,84,000/-</u>
<u>Amount under Conventional Head:</u>	<u>Rs. 50,000/-</u>
	<u>=====</u>
<u>TOTAL</u>	<u>Rs.4,34,000/-</u>
	<u>=====</u>

16 The petitioners are also entitled to interest at 7.5% p.a. from the date of filing of the petition till the date of deposit on the enhanced amount of compensation. However, the petitioners are entitled to interest at 9% on Rs.4,04,000/- as awarded by the Tribunal.

17 The first respondent being the owner of the auto bearing No.AP-25-U-7728 is liable to pay the above compensation to the petitioners. It is not in dispute that as on the date of accident, the auto was insured with the second respondent. Therefore, the second respondent has to indemnify the liability of the first respondent. Hence the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

18 In the result, the appeal is allowed in part, enhancing the compensation from Rs.4,04,000/- to Rs.4,34,000/- with interest at 7.5% p.a. on the enhanced amount of compensation of Rs.30,000/- only from the date of filing of the petition till the date of deposit. It

is further made clear that the petitioner Nos.2 and 3 alone are entitled for the enhanced amount of compensation.

T.SUNIL CHOWDARY, J.

Date: March 09, 2015.

kvsn

[\[1\]](#) 2009 ACJ 1298 (SC)

[\[2\]](#) 2006 (2) ALD 409

[\[3\]](#) (2014 ACJ 1430)