

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.2377 of 2005

J U D G M E N T:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 16.11.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nalgonda, in O.P.No.1390 of 2000, awarding compensation of Rs.2,25,000/-.

2. The appellant Nos.1 to 4/petitioners filed the above Original Petition under Section 166 read with Section 140 of the Act claiming compensation of Rs.5,00,000/- on account of the death of one Mohammad Khan (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 02.12.1998.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 02.12.1998 at about 09.00 a.m, the deceased along with others started in Tata Sumo bearing No. TN.02.B.3255 from Hyderabad in order to go to Visakhapatnam for shooting purpose and when it reached near Indra Nagar on NHW.No.9 within the P.S limits of Munugode of Nalgonda District at about 1:30 p.m, the driver of the Tata Sumo drove it at high speed in rash and negligent manner and applied sudden brakes, due to which the Tata Sumo turned turtle and deceased received grievous injuries. Immediately, the deceased was shifted to Nagarjuna hospital, Visakhapatnam and while undergoing treatment, he succumbed to injuries at 3.12.1998. Respondent Nos.1 being the owner and respondent No.2 being the insurer of the Tata Sumo are jointly liable to pay compensation to the petitioners, who are wife and minor children of the deceased. Deceased was hale and healthy at the time of accident and used to earn Rs.3,000/- p.m. Due to his death, the petitioners are the dependants on the earnings of the deceased. Due to his sudden death, they lost their livelihood and prayed the Court to grant compensation.

5. Before the Tribunal, respondent No.1 remained *ex parte*.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioners to prove the manner of accident, age, income of the deceased and disputed that the driver of the vehicle was having valid license to drive the Tata Sumo and further put the petitioners to prove that the petitioners are the dependants of the deceased and finally prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed four issues and to substantiate the claim the petitioners got examined PWs.1 & 2 and got marked Exs.A.1 to A.5 on their behalf. On behalf of the contesting respondent, no oral evidence was adduced but got marked Ex.B1.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Tata Sumo and awarded compensation of Rs.2,25,000/- along with interest at 9% p.a.

9. Being not satisfied by the award passed by the Tribunal, the petitioners preferred the present appeal.

10. The learned counsel appearing for the appellants/petitioners argued that the Tribunal has not considered that the deceased was working as Site Assistant in Sravanthi Movies and he used to earn Rs.20,000/- p.m and the Tribunal without considering all those aspects awarded meagre compensation. Further, the Tribunal also has not awarded proper compensation towards consortium and relied upon the case law reported in **Chanderi Devi and another v. Jaspal Singh and others**, wherein the Hon'ble Supreme Court held at para 8 as follows:

"8. Further, it has been contended by the learned Counsel that the High Court ought not to have arbitrarily fixed the income of the deceased at the time of his death at Rs. 1,00,000/- per annum, without properly appreciating the facts and evidence on record and assigning valid reasons, while fixing the same. It is contended by the learned Counsel that this Court has held that courts have the power to fix any reasonable amount in favour of the claimants in the absence of documentary proof of monthly income of the deceased and also that if the amount claimed by the claimants was reasonable, then the same could be relied on by the courts & award just and reasonable compensation. Further, it is contended by the learned Counsel that in the instant case, the Appellants had produced the certificates showing the income of the deceased as well as the income tax payments made by the deceased for the year ending 2006, which ought to have been considered by the courts below while determining the income of the deceased to calculate the loss of dependency of the Appellants."

and prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the second respondent/Insurance Company contended that the facts and circumstances of that case are not relevant to the present case and the petitioners failed to produce any evidence that the deceased worked as Assistant in Sravanthi Movies and maintaining the family. The learned counsel for the respondent also argued that Ex.B1 is the comprehensive policy issued for private car and the deceased is not a third party to entitle for compensation under Ex.B1 and that the deceased is a gratuitous passenger and he is not entitled for enhanced compensation. The Tribunal after considering the evidence on record rightly assessed the compensation and finally prayed the Court to dismiss the petition.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellants/petitioners are entitled for enhancement of compensation as prayed for?

14. **P O I N T S:** PW.1 only stated that the deceased was working as Site Assistant in Sravanthi movies and earning Rs.2,000/- p.m and no salary certificate was filed by the petitioners to prove the said fact. Further, no person from Sravanthi movies was examined to prove that the deceased was working in Sravanthi movies. Considering all these facts, the Tribunal rightly fixed the notional income as Rs.15,000/- and assessed the future contribution of the deceased as Rs.2,16,000/-.

15. It is no doubt, the Tribunal has granted Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium. In a decision of the larger Bench of the Hon'ble Supreme Court in ***Ramilaben Chinubhai Parmar and others v. National Insurance Co. Ltd., & others.***, the Supreme Court awarded Rs.50,000/- as conventional amount to the dependants. Therefore, in view of the judgment of the Hon'ble Court, I am of the view that the petitioners are entitled for Rs.50,000/- towards conventional amount in addition to the amount already awarded under the head of future

contribution instead of the amount under other heads. Thus, appellants are entitled for total compensation of Rs.2,16,000/- + Rs.50,000/- = Rs.2,66,000/-.

16. Therefore, in view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.2,25,000/- to Rs.2,66,000/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

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

ANIS, J

Date: 07.11.2015

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