

The Hon'ble Sri Justice T. Sunil Chowdary
MACMA No.773 OF 2009

JUDGMENT:

1 Appellants / claimants filed the present appeal assailing the judgment and award dated 13.09.2006 passed in MVOP No.493 of 2005 on the file of the Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati.

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

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

4 On 13.02.2005 at about 9.15 AM one Srinivasulu (hereinafter after referred to as 'the deceased') was proceeding on his TVS Moped bearing No.TN 09-AD-9014 and when he reached granite factory near Narsireddy Candriga village on his moped, the driver of a mini bus bearing No.AP 03-V-7567 had driven the same in a rash and negligent manner and dashed against the moped of the deceased. As a result of the said accident, the deceased sustained grievous injuries and was immediately shifted to Ramachandra hospital at Chennai where he died at 2.00 PM on the same day. In connection with the said accident, the Station House Officer, Satyavedu police station had registered a case in Cr.No.7 of 2005 under section 304-A of IPC against the driver of the offending bus. The case of the claimants is that by the date of accident, the deceased was aged about 28 years and was earning Rs.4,500/- p.m. by doing mason work and that the claimants are dependents on the deceased.

5 The first respondent who is the driver of the mini bus remained *ex parte*. The second respondent – insurer filed counter inter *alia* contending that the accident occurred due to the negligent act of the deceased and that there was no negligence on the part of the driver of the mini bus. The amount of compensation claimed by the claimants, under various heads, is highly excessive and exorbitant. It is the duty of the claimants to prove that

the first respondent had not violated the terms and conditions of the policy.

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

- i. Whether the pleaded accident occurred resulting the death of the deceased and if so was it due to fault of the driver of the first respondent's Mini Bus bearing No.AP 03 V 7567?
- ii. Whether the Mini Bus in question belonging to R.1 and stood insured with R.2 by the date of accident and if so whether the policy covers the risk of the deceased?
- iii. Whether the petitioners are the Legal Representatives of the deceased and entitled to compensation and if so, to what amount from which of the respondents?
- iv. Whether the O.P. is bad for Non-Joinder of necessary parties?
- v. To what relief?

7 During the course of trial, on behalf of the petitioners/claimants P.Ws.1 to 3 were examined, Exs.A.1 to A.5 were marked. On behalf of the respondents, though no oral evidence was adduced, copy of the insurance policy was marked as Ex.B.1.

8 The Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No.AP 03 V 7567 belonging to the first respondent and by fixing the income of the deceased at Rs.1,500/- p.m, granted Rs.2,93,000/- as compensation to the claimants with interest at 7.5% p.a by award and decree dated 13.09.2006. Dissatisfied with the compensation awarded to them, the claimants preferred this appeal.

9 Sri J. Ugra Narasimha, the learned counsel for the claimants submitted that the Tribunal has not properly considered the oral and documentary evidence while determining the income of the deceased. He further submitted that the amount of compensation awarded under various heads is too meager.

10 *Per contra*, Sri Harinath Guptha, the learned standing counsel for the second respondent - insurance company submitted that the Tribunal has awarded just and reasonable compensation to the claimants and that there are no grounds much less valid grounds to enhance the compensation.

11 Since this is an appeal by the claimants seeking enhancement of compensation and since the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the offending mini bus belonging to the first respondent became final, the only point for consideration in this appeal is

To what compensation are the claimants entitled to?

POINT :

12 As per the testimony of P.W.1, the deceased was aged about 28 years by the date of accident. In Ex.A.4-Postmortem report also the age of the deceased was shown as 28 years. Hence, there is no dispute to take the age of the deceased as 28 years by the date of accident. As per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***^[1], the appropriate multiplier for the age of 28 years is '17'. As per the testimony of P.Ws.1 and 2, the deceased was earning Rs.4,500/- p.m. as mason mastri. The Tribunal disbelieved the oral testimony of P.Ws.1 and 2 and arrived at a conclusion that the deceased may earn Rs.1,500/- p.m. It is not possible for the labourers or other rustic villagers to produce documentary evidence to prove their income. The Tribunal or the Court has to take into consideration the ground realities while determining the income of the individuals belong to unorganized sectors. Even by attending cooli work, the deceased may earn Rs.3,000/- p.m. Hence, I am of the considered view that the deceased may earn Rs.3,000/- p.m. From out of the said Rs.3,000/- 1/4th shall be deducted towards the personal expenditure of the deceased in view of the ratio laid down in Sarla Verma case (1 supra). Thus, the net contribution of the deceased to the family would be Rs.2,250/- x 12 = Rs.27,000/- p.a. Therefore, the loss of dependency would come to (Rs.27,000/- X 17) Rs.4,59,000/-.

13 In view of the principle laid down by the apex Court in *Ramilaben Chinubhai Parmar and Others Vs. National Insurance Co. & Others*^[2], the claimants are entitled to Rs.50,000/- as conventional amount instead of amount under different heads as awarded by the Tribunal. Since the claimants claimed a total compensation of Rs.5.00 lakhs, I am inclined to restrict the compensation to the extent claimed by the claimants. Thus, the claimants, in all, are entitled to Rs.5,00,000/- as compensation from the respondents. The point is answered accordingly.

14 The first claimant is wife, claimants 2 and 3 are minor children and claimants 4 and 5 are parents of the deceased. Hence I am inclined to apportion the amount of compensation among the claimants as follows:

First claimant is entitled to Rs.2,20,000/-, claimants 2 and 3 are entitled to Rs.1.00 lakh each and claimants 4 and 5 are entitled to Rs.40,000/- each.

15 In the result, the appeal is allowed, the award passed by the Tribunal is modified, and an award is passed for Rs.5,00,000/- in favour of the appellants/claimants, against the respondents with interest at 7.5% p.a. throughout, with proportionate costs in the Tribunal. Parties are directed to bear their own costs in this appeal.

T.SUNIL CHOWDARY, J.

January 20, 2015.

kvsn

^[1] (2009) 6 SCC 121

^[2] (2014 ACJ 1430)