

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.43 OF 2013

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 18.6.2012 passed in M.V.O.P.No.1957 of 2010 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-XIII Additional Chief Judge, (Fast Track Court), City Civil Court, Hyderabad, wherein and whereby an amount of Rs.1,65,000/- was awarded to the claimants as against the claim of Rs.5,00,000/-.

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

3. The facts leading to filing of the present appeal are briefly as follows: On 04.3.2010, B.Harish Goud along with others was proceeding on motor cycle bearing No.AP 11R 5474 being driven by one Santosh Kumar Goud from Suchitra to Nellore village of Medak District. When they reached National Highway-7 at the outskirts of Ramaipally, Medak District, the driver of DCM Toyota Van bearing No.AP 25V 2992, had driven the same in a rash and negligent manner and applied sudden breaks without giving any signal. In that process, the rider of the scooter dashed against DCM van. Due to the accident, Harish Goud (hereinafter referred to as, the deceased) sustained grievous injuries on various parts of the body and died on 05.3.2010 while undergoing treatment in Gandhi Hospital, Hyderabad. The Station House Officer, Toopran Police Station registered a case in Crime No.45 of 2010 under Sections 304A and 337 IPC against the driver of DCM van. By the time of the accident, the deceased was aged about 19 years and used to earn Rs.8,000/- per month. DCM Van bearing No.AP 25V 2992 belongs to the first respondent was insured with the second respondent with effect from 29.6.2009 to

28.6.2010 vide policy No.050701/31/09/01/00000891. Hence, the petitioner Nos.1 and 2, who are parents of the deceased, filed the petition claiming compensation of Rs.5,00,000/- from the respondent Nos.1 and 2 jointly and severally with interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition including the manner of the accident, age and income of the deceased. There was no rashness or negligence on the part of the driver of the DCM Van. In fact, the accident occurred due to the rash and negligent driving of the rider of the motor cycle. The first respondent had violated the terms and conditions of the policy; therefore, there is no obligation on the part of the second respondent to indemnify the liability of the first respondent. Hence, the petition is liable to be dismissed.

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

1. Whether the pleaded accident dated 04.03.2010 was occurred due to the rash and negligent driving of the driver of the crime vehicle i.e., DCM Van bearing No.AP 25V 2992 and whether the deceased B.Harish Goud died due to the said accident?
2. Whether the petitioners are entitled to any compensation and, if so, to what quantum and whether crime vehicle was owned by first respondent and insured with second respondent and what is the liability of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, no oral evidence was let in but Ex.B1 was marked.

7. On appraising 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 driver of the crime vehicle which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.1,65,000/- with interest at 6% per annum from the date of petition till the date of

realisation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimants preferred the present appeal.

8. The contention of the learned counsel for the second respondent—Insurance Company is three fold:

- (1) the Tribunal has not considered the income of the deceased in right perspective;
- (2) the Tribunal awarded meager amount of compensation; and
- (3) the Tribunal ought to have awarded interest at 12% per annum from the date of the petition till the date of realisation.

Per contra, learned counsel for the second respondent submitted that by the time of the accident, the deceased was a non-earning member and that aspect was considered by the Tribunal in right perspective. She further submitted that the rate of interest awarded by the Tribunal is just and reasonable. She also submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

9. Basing on the rival contentions, the points that arise for consideration in this appeal are:

- (1) Whether the Tribunal has awarded just and reasonable compensation?
- (2) Whether the Tribunal committed error while awarding interest at 6% per annum?

Point No.1:

10. As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of DCM Van, which resulted in the death of the deceased. The Tribunal arrived at such conclusion basing on the oral testimony of P.Ws.1 and 2 coupled with Exs.A1 to A5. 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. 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 DCM Van, which resulted in the

death of the deceased.

11. In the petition, the age of the deceased is mentioned as 19 years. As per the recitals of Ex.A3 (Inquest report) and Ex.A4 (Post mortem report), the age of the deceased is mentioned as 16 years. The petitioners have not produced any document to prove the age of the deceased as 19 years. Taking into consideration the recitals of Exs.A3 and A4, the Tribunal arrived at a conclusion that the deceased was aged about 16 years by the time of accident. As per the principle enunciated in **Munna Lal Jain v Vipin Kumar Sharma**^[1], if the deceased is a bachelor, for determining the multiplier the age of the deceased has to be taken into consideration. The Tribunal committed error while taking the age of the mother of the deceased to determine the multiplier. As per the principle enunciated in **Sarla Verma v DTC**^[2], appropriate multiplier that would be applicable for the age group of 15 to 25 is '18'.

12. The predominant contention of the learned counsel for the claimants is that the Tribunal committed error while determining the income of the deceased as Rs.1,000/- per month taking aid of second schedule of the M.V. Act. The present petition is filed under Section 166 of the M.V. Act. While deciding the cases under the M.V. Act, the Tribunal or this Court has to take into consideration the ground realities in order to safeguard the interest of the claimants as well as the insurance companies. It is common knowledge that in the rural areas, minors also used to attend cooli works. If the deceased would have been alive, certainly he will attend the cooli work or some other work and provide maintenance to the petitioners in their old age. The Tribunal or court shall not lose sight of these aspects while determining the compensation. One may get not less than Rs.100/- per day even in the villages by attending the cooli work. The deceased may earn at least Rs.3,000/- per month even by attending

cooli work. As per the decision in **Sarla Verma**, if the deceased is a bachelor, 50% of the income shall be deducted towards his personal expenses. The deceased may contribute Rs.1,500/- per month to the family. The loss of dependency comes to $(Rs.1,500 \times 12 \times 18 =)$ Rs.3,24,000/-. In view of the principle enunciated in **Ramilaben Chinubhai Parmar v National Insurance Company Ltd.**^[3], and **Kishan Gopal v Lala**^[4], the petitioners are entitled to Rs.50,000/- towards compensation under conventional heads. Thus the total compensation for which the petitioners are entitled to is $(Rs.3,24,000 + Rs.50,000 =)$ Rs.3,74,000/-. Accordingly, point No.1 is answered.

Point No.2:

13. The M.V. Act is silent with regard to the percentage of interest to be granted. The Tribunal has to take into consideration the prevailing rates of interest as well as guidelines issued by the Reserve Bank of India from time to time, while awarding rate of interest. Taking into consideration the prevailing rate of interest in the year 2010 and other attending circumstances, I am of the considered view that the petitioners are entitled for interest at 7.5% per annum from the date of petition till realisation. Accordingly, point No.2 is answered.

14. In the result, the appeal is allowed. The compensation is enhanced from Rs.1,65,000/- to Rs.3,74,000/- (Rupees three lakhs seventy four thousand only) with interest at 7.5% per annum from the date of the petition till the date of realisation. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. The petitioner Nos.1 and 2 are equally entitled for the enhanced compensation. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 12th August, 2015.

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[\[1\]](#) (2015) 6 SCC 347

[\[2\]](#) (2009) 6 SCC 121

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

[\[4\]](#) (2014) 1 SCC 244