

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.Nos.870 and 2703 of 2009

COMMON JUDGMENT

MACMA Nos.870 and 2703 of 2009 are filed by the claimants and the insurance company respectively, challenging the judgment and award dated 05.09.2008 passed in O.P.No.439 of 2006 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Nizamabad.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows;

On 18.11.2005 at about 9.00 PM., while Velpula Meenaiah (hereinafter referred to as 'deceased') was proceeding to Kondapur from Khanapur on his motorcycle bearing No.AP 1E 4639, on the way, the driver of the lorry bearing No.AP 28U 7378 was wrongly parked the same at Kondapur without any indication or parking lights, due to which, the deceased dashed the stationed lorry and sustained injuries. Immediately after the accident, the deceased was shifted to the Government Hospital, Nirmal and from there to the Government Hospital, Nizamabad, where he succumbed to the injuries on 19.11.2005. The accident occurred due to rash and negligent parking of the lorry which resulted in death of the deceased. By the time of accident, the deceased was aged about 35 years and used to earn Rs.6,000/-per month as lorry driver. The petitioners are the dependants on the income of the deceased. Lorry bearing No.AP 28U 7378, which belongs to the first respondent, was insured with the second respondent

insurance company w.e.f 19.08.2005 to 18.08.2006. Therefore, the respondents are jointly and severally liable to pay compensation amount of Rs.8,00,000/- to the petitioners.

4. The first respondent remained *ex parte*. The second respondent filed written statement denying all the averments made in the petition, *inter alia*, contending that there was no rashness or negligence on the part of the driver of the lorry to cause the accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. This respondent is not liable to pay compensation to the petitioners as the driver of the lorry was not having valid driving licence as on the date of the accident.

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

- (i) Whether the accident has taken place due to rash and negligent driving of lorry bearing No.AP 28 U 7378 by its driver?
- (ii) Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
- (iii) 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 A6 were marked. On behalf of the respondents, no oral evidence was adduced, but Exs.B1 and B2 were marked. Basing on the oral, documentary evidence and other available material, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent act of the driver of the lorry, which resulted in the death of the deceased and allowed the petition in part by awarding

compensation of Rs.5,64,000/-. Feeling aggrieved by the judgment and award of the Tribunal, the claimants and the Insurance Company preferred the present appeals.

7. Heard Sri M. Rajamalla Reddy, learned counsel for the claimants and Sri A.V.K.S.Prasad, learned Standing Counsel for the Insurance Company in both the appeals.

8. Learned counsel for the claimants submitted that the Tribunal awarded meager amount of compensation to the petitioners. He further submitted that the Tribunal has not rightly considered the material available on record while determining the income of the deceased.

9. Learned Standing Counsel for the Insurance Company submitted that the compensation awarded by the Tribunal under various heads is on higher side. He further submitted that the Tribunal has not applied correct multiplier while determining the loss of dependency. He also submitted that the rate of interest awarded by the Tribunal is on higher side.

10. Basing on the above rival contentions, the point that arises for consideration in these appeals is, whether the Tribunal has awarded fair, just and reasonable compensation or not?

11. **Point No.1:**

There is no much dispute between the parties with regard to the manner of accident and the factum of the death of the deceased. The Tribunal has assigned cogent and valid reasons while arriving at conclusion that the accident occurred due to rash and negligent act of the driver of the lorry. Having regard to the facts and circumstances of the case, I am of the considered view

that the finding recorded by the Tribunal so far as the manner of accident and the factum of death of the deceased are concerned, need not be interfered with.

12. As per the testimony of P.W.1, her husband used to earn Rs.8,000/-per month as a driver. Except the self-serving testimony of P.W.1, there is no other convincing evidence to prove the income of the deceased as on the date of the accident. In Ex.A4-inquest panchanama, the avocation of the deceased is mentioned as a driver. The fact remains that the petitioners have not produced the driving licence of the deceased. In the absence of documentary evidence, some guess work is to be made to determine the income of the deceased. Even by attending a coolie work, the deceased may earn Rs.4,000/-per month. The Tribunal has rightly considered the avocation of the deceased and arrived at a conclusion that the deceased may earn Rs.4,000/-per month. Hence, there are no grounds much less valid grounds to interfere with the findings of the Tribunal so far as the income of the deceased is concerned.

13. The Tribunal deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased. In this case, the claimants are 4 in number. As per the principle annunciated in a decision reported in **SARLA VERMA v. DELHI TRANSPORT CORPORATION**^[1], if the claimants are four in number, the Tribunal has to deduct $\frac{1}{4}^{\text{th}}$ towards personal expenses of the deceased. Having regard to the principles annunciated in the said decision, I am inclined to deduct $\frac{1}{4}^{\text{th}}$ towards personal expenses of the deceased. The deceased may contribute Rs.3,000/-per month and Rs.36,000/-per annum. By the time of accident, the deceased was aged about 35 years. The

Tribunal has taken the multiplier as '17'. As per the principle annunciated in **SARLA VERMA's** case (1 supra), the appropriate multiplier for the age group of 31 to 35 is '16'. Therefore, the loss of dependency in this case comes to Rs.36,000X16=5,76,000/-. The Tribunal also awarded an amount of Rs.15,000/- towards consortium and Rs.5,000/-toward funeral expenses. The Tribunal has awarded just and reasonable compensation under the said two heads. The compensation awarded under various heads is as follows;

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|-------|--------------------|------------------|
| (i) | Loss of dependency | -- Rs.5,76,000/- |
| (ii) | Consortium | - Rs. 15,000/- |
| (iii) | Funeral expenses | - Rs. 5,000/- |

In total, an amount of Rs.5,96,000/- is awarded as compensation to the petitioners to meet the ends of justice.

14. Learned counsel for the Insurance Company submitted that the Tribunal has awarded interest @ 9% per annum, which is on higher side. Section 171 of the Motor Vehicles Act, 1988, confers discretionary power on the Tribunal to award interest. Section 171 of the said Act is silent with regard to the rate of interest. The Tribunal has exercised its discretionary power basing on the sound principles of law. It appears that the Tribunal has awarded interest at 9% per annum taking into consideration the number of claimants. There are no grounds much less valid grounds to interfere with the rate of interest awarded by the Tribunal.

15. In the result, MACMA No.870 of 2009 is allowed in part by enhancing the compensation from Rs.5,64,000/- to Rs.5,96,000/- with interest at 9% per annum from the date of the petition till the

date of realization. Respondents 1 and 2 are directed to deposit the enhanced compensation amount jointly and severally, within two months from the date of receipt of a copy of this order. MACMA No.2703 of 2009 is dismissed. Miscellaneous petitions, if any, pending in these appeals shall stand closed.

T. SUNIL CHOWDARY, J

23rd February, 2015
sj

[\[1\]](#) (2009) 6 SCC 121