

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

-
M.A.C.M.A.No.603 of 2009

JUDGMENT:

This appeal is filed by the appellants/petitioners assailing the judgment and award, dated 03.05.2005 passed in M.V.O.P.No.1162 of 2000 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

Petitioner No.1 is the wife, petitioner Nos.2, 3 and 4 are sons and petitioner No.5 is the mother of late Koti Reddy.

On 20.06.2000 at about 12:30 PM, Sri Koti Reddy (hereinafter referred to as 'the deceased') was proceeding to Thokapalli Christian palem, Peda Araveedu Mandal, Prakasam District on his motorcycle with normal speed and when he crossed Theegaleru Bridge of Thokapalli Christian palem, the driver of the Mini Lorry bearing No.AP-27T-9198 (for short, 'the crime vehicle') came from Kokkodikunta side in a rash and negligent manner and dashed against the motorcycle of the deceased. Immediately after the accident, the deceased was shifted to Government Hospital, Markapuram from thereto Government Hospital, Guntur where he died. By the time of accident, the deceased was aged about 63 years and used to earn Rs.1,50,000/- by cultivating the lands. By the time of accident, the crime vehicle, which belongs to the first respondent, was insured with the second respondent – Company. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. The petitioners have filed the petition claiming compensation of Rs.6,25,000/-.

4. The first respondent remained *ex-parte*. The second respondent – Insurance Company filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to rash and negligent driving of the motorcycle by the deceased and there was no negligence on the part of the driver of the crime vehicle. The petitioners are not dependents on the income of the deceased and the amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the accident occurred due to rash and negligent driving of the driver of Lorry No.AP-27T-9198?
2. To what compensation the petitioners are entitled and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 to 4 were examined and Exs.A.1 to A.10 were marked. On behalf of the respondent No.2, no oral evidence was adduced and Ex.B.1 was marked.

7. Basing on the material available on record, the Tribunal partly allowed the petition by granting compensation of Rs.1,35,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners filed the present appeal.

9. Sri K.Suresh Reddy, the learned counsel for the appellants/petitioners, submitted that the Tribunal discarded Exs.A.6 to A.8 receipts on erroneous grounds. He further submitted that the Tribunal granted the compensation on assumptions and presumptions.

10. Per contra, Sri E.Venugopal Reddy, the learned Standing Counsel for United India Insurance Company Limited (R.2), submitted

that petitioner Nos.2 to 4 are not dependents on the income of the deceased. He further submitted that absolutely there is no material on record to establish the income of the deceased.

11. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. The Insurance Company did not choose to file an appeal challenging the finding of the Tribunal so far as the manner of the accident and *factum* of death of the deceased are concerned. The oral testimony of PW.1 coupled with Exs.A.1 to A.5 clearly reveals that the accident occurred due to rash and negligent driving of the driver of the crime vehicle which resulted in the death of the deceased. The finding recorded by the Tribunal so far as the manner of the accident and *factum* of death of the deceased became final. Hence, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the crime vehicle which resulted in the death of the deceased.

12. The Tribunal granted compensation of Rs.1,35,000/-under the heads of loss of dependency and loss of consortium. To prove the income, the petitioners mainly relied on the oral testimony of PWs.3 and 4, and Exs.6, 7 and 8. As per the oral testimony of PW.1, the deceased was cultivating Ac.25-00 of land by raising sweet lime garden by the time of his death. As per the testimony of PWs.3 and 4, they used to purchase sweet lime from the deceased. Exs.A.6, A.7 and A.8 are the receipts. The Tribunal gave a finding that the petitioners have not produced any document to establish that the deceased was having Ac.25-00 of land. For one reason or other, the petitioners did not choose to produce the sale deeds or pattadar passbooks or any other relevant document to establish that the deceased was having Ac.25-00 of land at Markapuram. If really the deceased was having so much of land what prevented the petitioners to establish the same by producing evidence much less cogent and convincing evidence. In motor accident claim cases, the possibility of

creating documents to boost the income of the deceased cannot be ruled out completely. The Tribunal or the Court has to take into consideration the ground realities and prevailing market index while assessing the income of the deceased. The deceased is a retired DSP. Being a retired DSP, the possibility of supervising the cultivation work as an owner by the deceased cannot be ruled out completely. It may not be possible to produce documentary evidence to prove the avocation of individuals in each and every case. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd.**^[1] and **Syed Sadiq vs. Divisional Manager, United India Insurance Co. Ltd.**^[2], I am of the considered view that the earning capacity of the deceased may be determined at Rs.4,200/-. Out of which, 1/3rd shall be deducted, the deceased may contribute Rs.2,800/- per month. The Tribunal applied the multiplier as '5'. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**^[3], the appropriate multiplier is '7'. The loss of dependency comes to Rs.2,35,200/-. Petitioner No.1 being the wife of the deceased is entitled for consortium. The consortium granted to petitioner No.1 is just and reasonable. I am inclined to award an amount of Rs.10,000/- towards funeral expenses.

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

Loss of dependency	----	Rs.2,35,200/-
Loss of consortium	----	Rs. 15,000/-
Funeral expenses	-----	<u>Rs. 10,000/-</u>
Total compensation amount:		<u>Rs.2,60,200 /-</u>

14. It is the duty of the Court to apportion the compensation among the petitioners. Taking into consideration the age and future needs of the petitioners, I am inclined to apportion the compensation in the following manner:

Petitioner No.1 ----- Rs.2,00,200/-

Petitioner No.2 ----- Rs. 20,000/-

Petitioner No.3 ----- Rs. 20,000/-

Petitioner No.4 ----- Rs. 20,000/-

15. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.1,35,000/- to Rs.2,60,200/- with interest at the rate of 7.5% from the date of petition till the date of realisation. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

21st January, 2015

lvd

[\[1\]](#) 2011 ACJ 2436

[\[2\]](#) 2014 (2) SCC 735

[\[3\]](#) . 2009 ACJ 1298