

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1355 OF 2005

-

JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 29.03.2005, passed by the III Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Tirupati, in M.V.O.P.No.552 of 2003, awarding compensation of Rs.3,08,000/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.7,00,000/- on account of the death of one G.Purushotham Naidu (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. The brief averments made in the petition are that on 16.06.2003 at about 11.00 a.m. while the deceased being pillion rider and one S.Jayakumar as rider of Hero Honda motor cycle were going from Nagaiahgari palle towards Mittur and when they reached near Ithepalle on Chandragiri-Chittoor main road, the driver of the 1st respondent drove the Maruthi Van bearing No.KA01 M 5089 in a rash and negligent manner without due care and caution came from backside and hit the motor cycle. As a result of which, the deceased fell on the right side and sustained fracture to his right hand, severe injury on the back of his head and other injuries. Immediately, he was admitted to Government Hospital, Chandragiri and from there shifted to SVRR GG Hospital, Tirupati, and later he was admitted in SVIMS hospital, Tirupati where he died on 12/13.07.2003 at

12.20 a.m. while undergoing treatment. The Sub-Inspector of Police, Chandragiri registered a case in Crime No.72 of 2003 for the offence punishable under Section 337 IPC and later altered the Section of law to Section 304-A IPC.

The petitioners stated that the deceased was hale and healthy prior to the accident. The deceased was working as Accountant in Bombay Dyeing showroom, Tirupati and earning Rs.3,500/- per month towards his salary. The deceased was also having mini lorry bearing No.AP03 V 4831 in his name and the same was given to Jerssy Milk Dairy on rental basis. The deceased was also having milk business and doing agriculture in his own land and thereby used to earn Rs.15,000/- per month from milk business and Rs.20,000/- per annum from agriculture. The deceased used to contribute the entire income to his family members as he was the sole breadwinner of his family. The petitioners are deprived of the love and affection and also the income of the deceased due to the accident. Therefore, the petitioners prayed the Court to grant compensation of Rs.7 lakhs.

4. The brief averments made in the counter filed by the first respondent are as follows:

The respondent put the petitioners to prove the manner of accident, age, income of the deceased and also the relationship of the petitioners with the deceased. The respondent further stated that the petition is bad for non-joinder of owner and insurer of Hero Honda motor cycle in which the deceased was travelling as pillion rider at the time of accident. There was a contributory negligence on the part of the rider of motor cycle in causing the accident. The respondent has validly insured his vehicle with the second respondent and at the

time of accident, the policy was in force, and prayed the Court to dismiss the petition.

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

The respondent put the petitioners to prove the age, occupation and income of the deceased. The respondent specifically stated that the accident was caused due to rash and negligent driving of the driver of the motor cycle, as such the respondent is not liable to pay compensation. Further, the claim of the petitioners is high and excessive, and finally, prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed five issues and to substantiate the claim, PWs 1 to 3 were examined and got marked Exs.A.1 to A.8. On behalf of the respondents, no oral or documentary evidence was adduced.

7. Basing on the evidence on record, the Tribunal held that the accident was caused due to rash and negligent driving of the driver of Maruti van bearing No.KA01 M 5089 and awarded compensation of Rs.3,08,000/- along with 9% interest.

8. Not satisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

9. The learned counsel for the appellants argued that the Tribunal has not considered the income of the deceased, who was working as an Accountant in Bombay Dyeing showroom and earning Rs.3,500/- per month though PW3 in his evidence clearly stated the said fact; that PW1 – wife of the deceased also stated that her husband was doing agriculture and also earning income from milk business, but the said facts were not considered by the

Tribunal; that the appellants are the dependants on the income of the deceased, as such in view of the judgment of the Hon'ble Supreme Court reported in *Sarla Verma and others Vs. Delhi Transport Corporation and another*^[1], 1/4th has to be deducted towards the personal expenses of the deceased; that as per the S.S.C. certificate, age of the deceased is about 34 years and relevant multiplier as per *Sarla Verma's case* is "16"; that in view of the judgment of the Hon'ble Supreme Court reported in *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others*^[2], the petitioners are entitled for Rs.50,000/- towards conventional amounts; that the Tribunal granted less amount towards loss of consortium and funeral expenses, and therefore, prayed the Court to enhance the compensation.

10. On the other hand, the learned counsel for the second respondent argued that the Tribunal after considering the evidence on record, rightly granted just compensation; that the petitioners are not entitled for any enhancement, and finally, prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for both the parties, the points that arise for consideration are:

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

12. **Points:**

A perusal of the evidence of PWs 1 to 3 shows that the deceased was working as an Accountant in Bombay Dying

showroom and earning Rs.3,500/- per month. There is no dispute as per Ex.A.7 that the deceased was aged about 34 years at the time of accident. The Tribunal, after considering the oral evidence on record, rightly fixed the monthly income of the deceased at Rs.2,000/- per month, which comes to Rs.24,000/- per annum as the petitioners have not filed any proof to show that the deceased was running milk business and doing agriculture prior to his death.

13. Admittedly, the dependants are more than four. In view of *Sarla Verma's case* (1 supra), the relevant multiplier for the age group of 31 to 35 years is "16". Therefore, after deducting 1/4th towards personal expenses, the contribution of the deceased comes to Rs.18,000/- per annum. Thus, the loss of earnings comes to Rs.2,88,000/- (Rs.18,000/- x multiplier "16").

14. Further, in view of the judgment of the Hon'ble Supreme Court in *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others* (2 supra), the amount awarded towards loss of consortium and funeral expenses have to be enhanced. Therefore, an amount of Rs.50,000/- is awarded towards loss of consortium to the first appellant/first petitioner and Rs.10,000/- is awarded towards funeral expenses. The findings of the Tribunal with regard to awarding compensation of Rs.10,000/- towards loss of estate and Rs.25,000/- towards medical expenses, are unaltered. Thus, the total compensation payable to the petitioners/claimants comes to Rs.3,83,000/- (Rs.2,88,000/- + Rs.50,000/- + Rs.10,000/- + Rs.10,000/- + Rs.25,000/-).

15. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.3,08,000/- to Rs.3,83,000/-. For the enhanced

amount of Rs.75,000/-, an interest at 7.5% is awarded in view of the judgment of the Hon'ble Supreme Court in *Sarla Verma's case* (1 supra) from the date of appeal till the date of realisation. It is made it clear that the first appellant/first petitioner is exclusively entitled to the amount awarded towards loss of consortium besides her apportioned compensation.

16. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

30.06.2015
Anr

THE HON'BLE SMT. JUSTICE ANIS

-

M.A.C.M.A. No. 1355 OF 2005

30.06.2015

Anr

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

[\[2\]](#) 2014 ACJ 1430