

The Hon'ble Sri Justice T. Sunil Chowdary

MACMA No.1123 OF 2009

JUDGMENT:

1 This appeal, under Section 173 of the Motor Vehicles Act, is filed by the petitioners-claimants assailing the judgment and award dated 05.11.2008 passed in MVOP No.355 of 2007 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy wherein and whereby an amount of Rs.2,68,800/- was awarded to the petitioners, as against the claim of Rs.5.00 lakhs.

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 06.05.2007 Chitta Mohd. Hyder along with his father and brother boarded Swaraj Mazda at Ranjole with Makai Butta bags to sell the same at Hyderabad. When the Swaraj Mazda reached within the limits of Digwal village on N.H.9, the driver of the lorry bearing No.KA 28 A 6154 (hereinafter referred to as 'the crime vehicle') had driven the same in a rash and negligent manner and hit the Swaraj Mazda. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle against which the Station House Officer, Koheer police station registered a case in Cr.No.47 of 2007 under sections 304-A and 338 IPC. In the said accident, Mohd. Hyder (hereinafter referred to as 'the deceased') and his father and brother died. It is the case of the petitioners that by the date of accident, the deceased was aged about 19 years and was earning Rs.10,000/- p.m. First petitioner is mother and petitioner Nos.2 to 6 are his brothers and sisters and they are dependants on the income of the deceased. Hence the petitioners filed the petition seeking compensation of Rs.5.00 lakhs from the respondents. The lorry bearing No.KA 28 A 6154, which belongs to the first respondent was insured with the second respondent and the Swaraj Mazda bearing No.AP 11 W 8977, which belongs to the third respondent was insured with the fourth respondent as on the date of accident. Therefore, the respondent Nos.1 to 4 are jointly and severally liable to pay compensation to the petitioners.

5 Respondent Nos.1 and 3 remained ex parte. The second respondent – insurer of the lorry bearing No.KA 28 A 6154 filed counter denying the material averments made in the petition, inter alia contending that the accident occurred due to the rash and negligent driving of the driver of the Swaraj Mazda and that there was no negligence on the part of the driver of the crime vehicle 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 unless the petitioners establish that the driver of the crime vehicle was having valid and effective driving licence to drive the lorry as on the date of accident. Therefore, this respondent is not liable to pay compensation to the petitioners. Hence the petition may be dismissed.

6 Fourth respondent – insurer of the Swaraj Mazda bearing No.AP 11 W 8977 filed counter denying the material averments made in the petition, inter alia contending that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA 28 A 6154 and that there was no negligence on the part of the driver of the Swaraj Mazda. The police registered the criminal case against the driver of the lorry only. This respondent is not liable to pay compensation to the petitioners if the driver of the Swaraj Mazda was not having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
- ii. Whether the petitioners are entitled for compensation, if so, to what quantum and from whom?
- iii. To what relief?

8 During the course of trial, on behalf of the petitioners P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked. On behalf of the 2nd respondent, R.W.1 was examined and Exs.B.1 to B.4 were marked.

9 The Tribunal, after appreciating the oral, documentary evidence and other

material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA 28 A 6154 which resulted in the death of the deceased Mohd. Hyder and allowed the petition in part by awarding compensation of Rs.2,68,800/- with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit, directing the respondent Nos.1 and 2 to deposit the said amount jointly and severally. Not being satisfied with the said amount of compensation, the claimants preferred this appeal.

10 Heard Sri P.Srihari Nath, the learned counsel for the petitioners and Sri L. Shantaram counsel representing Sri G.S. Prakash Rao, the learned counsel for the second respondent.

11 The contention of Sri P.Srihari Nath, the learned counsel for the petitioners is three fold.

- a. The Tribunal has not rightly considered the monthly income of the deceased and awarded meager amount of compensation.
- b. The Tribunal has not applied correct multiplier and deducted 1/3rd instead of 1/4th towards personal expenses of the deceased.
- c. The amount of compensation awarded under various heads is too meager.

12 Per contra, the learned counsel for the second respondent submitted that the Tribunal has assigned cogent and valid reasons to its findings. He further submitted that the Tribunal awarded just and reasonable compensation and hence the appeal is liable to be dismissed.

13 The only point that arises for consideration in this appeal is.

“Whether the Tribunal has awarded just and reasonable compensation?”

POINT:

14 As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA 28 A 6154. The finding recorded by the Tribunal on issue No.1 has become final in view of the non-filing of appeal or cross – objections by the respondent Nos.1 and 2. The Tribunal has assigned cogent and valid reasons to its findings. 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 lorry bearing No.KA 28 A 6154, which resulted in the death of the deceased.

15 The deceased was aged about 19 years and bachelor by the date of his death. The mother of the deceased was aged about 38 years. The Tribunal has to take into consideration the age of the mother or father of the deceased, whichever is less. For the age group of 36 to 40 years the appropriate multiplier is 15 as per the ratio laid down in **Sarla Verma Vs. Delhi Transport Corporation**. Therefore, the Tribunal has wrongly applied the multiplier as 16.

16 As per the testimony of P.W.1, the deceased used to earn Rs.10,000/- per month. Except the self serving testimony of P.W.1, there is no other convincing evidence to prove the income of the deceased. The Tribunal has taken the income of the deceased as Rs.2,100/- p.m. The learned counsel for the petitioners has drawn my attention to **Kishan Gopal Vs. Lala**. As per the principle enunciated in this case, even incase of child death, the Tribunal has to take the notional income as Rs.3,000/- p.m. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the deceased may earn Rs.3,000/- p.m. As per the decision reported in Sarla Verma case (supra) the Tribunal has to deduct 50% of the income of the deceased towards his personal expenses in case he was a bachelor. Therefore, the contribution of the deceased to the family would be Rs.1,500/-. Thus the loss of dependency would come to Rs.1,500/- X 12 X 15 = Rs.2,70,000/-. The petitioners are also entitled to Rs.50,000/- under the head 'non-conventional damages' in view of the principle laid down by Hon'ble apex Court in **Ramilaben Chinubhai Parmar and Others Vs. National Insurance Co. & Others**.

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

Loss of dependency : Rs.2,70,000/-
Amount under Conventional Head: Rs. 50,000/-

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TOTAL Rs.3,20,000/-

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18 The petitioners are also entitled to interest at 7.5% p.a. from the date of filing of the petition till the date of deposit on the enhanced amount of compensation. However, in view of the facts and circumstances of the case, the first petitioner alone is entitled to the enhanced amount of compensation of Rs.52,000/-.

19 In the result, the appeal is allowed in part, enhancing the amount of compensation from 2,68,800/- to Rs.3,20,000/- with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. Respondent Nos.1 and 2 are directed to deposit the said amount jointly and severally. Petition against the respondent Nos.3 and 4 is dismissed. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 07th April, 2015.

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