

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.Nos.120 of 2013 and 1398 of 2014

COMMON JUDGMENT:

M.A.C.M.A.No.120 of 2013 is filed by the insurance company challenging the judgment and award dated 10.09.2012 passed in O.P.No.1145 of 2010 on the file of the Motor Accidents Claims Tribunal cum II Additional District Judge, Visakhapatnam, wherein and whereby an amount of Rs.6,75,000/- was awarded as against the claim of Rs.10,00,000/-.

2. M.A.C.M.A.No.1398 of 2014 is preferred by the claimants challenging the judgment and award dated 10.09.2012 passed in M.V.O.P.No.1145 of 2010.

3. Both the appeals arise out of the award and judgment in M.V.O.P.No.1145 of 2010. Hence, I am inclined to pass common order in both the appeals to avoid confusion.

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

5. The facts leading to filing of the present appeals, in brief, are as follows:

On 08.05.2009 at about 2.30 p.m., Anirudh Rathi and one Venkataramana were proceeding towards Park Hotel from Beach Road in Visakhapatnam on motor cycle bearing No.AP 31 A5 9085. Anirudh Rathi was a pillionrider on the motor cycle. When they reached Appughar, the driver of the car bearing No.AP 31 AS 2662 had driven the same in a rash and negligent manner and dashed against the motor cycle. The accident occurred due to rash and negligent driving of the driver of the car against whom the concerned Station House Officer registered a case in Crime No.84 of 2009 for the

offence under Section 304-A IPC. Due to the accident, Anirudh Rathi sustained multiple fractures on various parts of the body and died on 11.05.2009 while undergoing treatment in Indus Hospital, Visakhapatnam. By the time of death, the deceased was aged about 19 years and studying 1st year B.Com Course. The deceased used to earn Rs.10,000/- per month as part time employee. The Station House Officer, III Town Police Station, Visakhapatnam registered a case in Crime No.84 of 2009 under Section 304-A IPC. Petitioners 1 and 2 are parents and petitioner No.3 is the brother of the deceased. The car bearing No.AP 31 AS 2662, which belongs to first respondent was insured with the second respondent company with effect from 18.02.2009 to 17.02.2010 vide policy No.3001/53528867/01/000. Therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioners.

6. The first respondent remained exparte. The second respondent filed counter denying all the material averments made in the petition including the manner of accident, age and income of the deceased. It is the duty of the petitioners to prove that the driver of the car was having valid and affective 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:

1. Whether the death of the deceased by name Anirudh Rathi occurred on account of the rash and negligent driving of the vehicle bearing No.AP 31 AS 2662 (car) by its driver?
2. Whether the petitioners are entitled to compensation? If so, to what amount and from whom?
3. To what relief?

8. During the course of trial, on behalf of the petitioners, PWs.1 to 3

were examined and Exs.A.1 to A.8 and Ex.X1 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked.

9. Basing on the oral and 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 the driver of the car and allowed the petition in part and awarded compensation of Rs.6,75,000/- with interest at 7.5% per annum from the date of petition till the date of deposit of the amount.

10. Feeling aggrieved with the quantum of compensation awarded by the Tribunal, the petitioners-claimants preferred C.M.A.No.1398 of 2014. Challenging the quantum of compensation awarded by the Tribunal, the second respondent-insurance company preferred C.M.A.No.120 of 2013.

11. Learned counsel for the claimants submitted that the Tribunal has committed error while taking the age of the mother in order to determine the multiplier. He further submitted tht the Tribunal has not awarded just and reasonable compensation. Per contra, learned counsel for the second respondent submitted that the Tribunal has rightly taken the age of the mother of the deceased to determine the appropriate multiplier. He further submitted that the Tribunal has not properly appreciated the oral testimony of P.Ws.1 to 3 and Exs.A7 and A8 and awarded compensation on assumptions and presumptions. He further submitted that the accident occurred due to the negligence of the rider of the motor cycle and there was no negligence on the part of the driver of the car bearing No.AP 31 AS 2662.

12. Basing on the rival contentions made by the parties, the points that arise for consideration in this appeal are:

1. Whether the accident due tto the rash and negligent driving of the driver of the car bearing No.AP 31 AS 2662, which resulted the

death of the deceased?

2. Whether the Tribunal has awarded just and reasonable compensation or not?

13. The oral testimony of P.W.1 coupled with Exs.A1, A2, A3, A4 and A5 clearly reveals that the deceased died due to injuries sustained in a motor vehicle accident that was occurred on 08-05-2009. As seen from the oral testimony of P.W.2, on the date of accident, himself and the deceased were proceeding on his motor cycle towards Park Hotel Visakhapatnam and the accident occurred due to rash and negligent driving of the driver of the car bearing No. AP 31 AS 2662. At the time of the accident P.W.2 had driven the motor cycle. Therefore, he is the competent person to speak about the manner of the accident. In the cross examination of P.W.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Ex.A1 First Information Report, Ex.A5 Charge Sheet, the accident occurred due to the rash and negligent driving of the driver of the car bearing No. AP 31 AS 2662. If really, the accident occurred as narrated by the second respondent, what prevented the driver of the car to lodge a complaint to concerned police station. The second respondent has not taken any steps to examine the driver of the car or any other eye witness to demonish the stand taken by the petitioners. The Tribunal has considered the oral and documentary evidence in right perspective and arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the car, which resulted the death of the deceased. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. There are no grounds much less valid grounds to interfere with the findings of the Tribunal on issue No.1.

14. 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 car bearing No. AP 31 AS 2662,

which resulted the death of the deceased.

15. As per the averments in the petition, the deceased was aged about 19 years by the time of death. As per the recitals of Ex.A3 Post-mortem report also, the deceased was aged about 19 years. Basing on these two documents, the Tribunal arrived at a conclusion that the deceased was aged about 19 years by the time of unfortunate death.

16. Basing on the oral testimony of P.W.1 and recitals of Exs.A7 and A8 the Tribunal arrived at a conclusion that by the time of accident, the deceased was studying B.Com (Honors) at Bangalore. In the cross examination of P.W.1, nothing is elicited to shake his testimony so far as the educational qualification of the deceased is concerned. A person, who obtained B.Com (Honors) degree may get a job in Government departments or private sector. Taking into consideration the age and other attendant circumstances the Tribunal arrived at a conclusion that the deceased may earn Rs.7000/- per month. While deciding the petitions of this nature, the Tribunal or the Court has to take into consideration the future prospects of the deceased. Viewed from any angle I am unable to accede to the contention of the learned counsel for the second respondent that the Tribunal committed error while arriving at a conclusion that the deceased may earn Rs.7000/- per month. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.7000/- per month. If the deceased is a bachelor the Tribunal or the Court has to deduct 50% of the income towards to his personal expenses. The deceased may contribute Rs.3500/- per month to the family. Per annum it comes to $\text{Rs.3500} \times 12 = \text{Rs.42000/-}$.

17. Predominant contention of the learned counsel for the petitioner is that the Tribunal committed error while taking the age of the mother of the deceased to determine the multiplier. Learned counsel for the second respondent submitted that if the deceased is a bachelor the

Tribunal has to take into consideration the age of the mother or father, which ever is lower. As per the principle enunciated in **MUNNALAL JAIN AND ANOTHER v.VIPIN KUMAR SHARMA AND OTHERS**^[1], the Tribunal has to take into consideration the age of the deceased bachelor in order to ascertain the multiplier. 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 Tribunal committed error while taking the age of the mother of the deceased to determine the multiplier. Admittedly, the deceased was aged about 19 years by the time of death. As per the principle enunciated in **SARLA VARMA vs. DELHI TRANSPORT CORPORATION**^[2] the appropriate multiplier is '18' for the age group of 15 to 25. The loss of dependency comes to Rs.42000/- X Rs.18000/- = Rs.7,50,000/-. The compensation for which the petitioners are entitled is as follows:

Loss of dependency	: Rs.7,50,000/-
Medical expenses	: Rs.77,000/-
Loss of estate	: Rs.5,000/-
Funeral expenses	: Rs.5000/-

Total	: Rs.8,43,000/-

18. The petitioners 1 and 2 alone all entitled for the enhanced amount equally. The petitioners are also entitled for interest @ 7.5% per annum from the date of petition till the date of deposit of enhanced amount. First respondent being the owner of the crime vehicle AP 31 AS 2662(car) is vicarious liability for the wrongful act done by his driver during the course of his employment. The crime vehicle which belongs to the first respondent is insured with the second respondent as on the date of accident. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation.

19. In the result M.A.C.M.A.No.1398 of 2014 is allowed in part by

enhancing the compensation from Rs.6,75,000/- to Rs.8,43,000/- with interest at 7.5% per annum from the date of petition till the date of depositing the amount on the enhanced compensation. M.A.C.M.A.No. 120 of 2013 is dismissed.

20. Consequently, miscellaneous petitions pending if any in these two appeals, shall stand closed.

T.SUNIL CHOWDARY, J

5th August, 2015
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[\[1\]](#) (2015)6 Supreme court cases 347

[\[2\]](#) (2009) 2 MAC 9 (SC)