

HON'BLE SMT JUSTICE ANIS
M.A.C.M.A.No.1336 of 2005

J U D G M E N T:

This appeal is filed by the appellant/third respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 31.01.2005, passed by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, Vijayawada, in M.V.O.P.No.499 of 2000, awarding compensation of Rs.7,40,300/-.

2. The respondent Nos.1 to 4/petitioners filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.10,00,000/- on account of the death of one Gadde Vijaya Lakshmi (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 16.03.1999.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the deceased was aged about 36 years, worked as Assistant Engineer in N.T.R. Health University, Gunadala, Vijayawada, by drawing a monthly salary of Rs.6,859/- p.m. On 16.03.1999 at about 5:00p.m, while she was driving the vehicle i.e., moped on the left side road margin and reached near Vinayaka theatre, one lorry bearing No.AP.7V.3476 came from Ramavarappadu towards Benz Circle, driven by the first respondent in a rash and negligent manner and dashed the vehicle of the deceased. Due to the said impact, the deceased fell down and front lorry tyre ran over the moped. Immediately, the deceased was shifted to Usha Hospital for treatment, where she died at 10:40 p.m on the same day while undergoing treatment. IV Traffic Police registered the case as in Crime No.42 of 1999 against the first respondent. The petitioners spent Rs.30,000/- towards the medical expenses to save her life. The third petitioner is a mentally retarded son, second petitioner is the daughter

and fourth petitioner is the mother of the deceased and all are the dependants on the income of the deceased and therefore, prayed the Court to grant compensation.

5. Before the Tribunal, the respondent Nos.1 & 2 remained *ex parte*.

6. The brief averments made in the counter filed by the third respondent are as follows:

The third respondent put the petitioners to prove the manner of accident, age and income of the deceased and also put the petitioners to prove that they have incurred medical expenses of Rs.30,000/-. The third respondent specifically put the petitioners to prove that the first respondent drove the vehicle in a rash and negligent manner and due to his negligence, the accident was occurred and finally stated that the compensation claimed by the petitioners is high and excessive and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed four issues and to substantiate his claim, the petitioners got examined PWs.1 to 4 and got marked Exs.A.1 to A.13 and Exs.X1 to X4 on their behalf. On behalf of the contesting respondent, RW.1 was got examined and Exs.B1 to B3 got marked.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the first respondent, due to which the deceased died on 16.03.1999, and awarded compensation of Rs.7,40,300/- along with interest at 9% p.a. to the petitioners against all the respondents.

9. Being aggrieved by the award passed by the Tribunal, the third respondent preferred the present appeal.

10. The learned counsel appearing for the appellant/third respondent

argued that the Tribunal without considering the evidence on record granted excess compensation to the petitioners. Further, the Tribunal ought not to have considered the salary of the deceased as Rs.6,859/- p.m, as the net salary of the deceased was Rs.4,517/- only and the gross salary was Rs.5,300/-. Further, it is also argued that the first petitioner is the husband of the deceased, working as a lecturer in Polytechnic College and drawing Rs.12,000/- p.m and he is not the dependant and the Tribunal committed error in giving finding as a dependant and awarding him compensation, therefore prayed the Court to allow the appeal by setting aside the award passed by the Tribunal.

11. The learned counsel appearing for respondent Nos.1 to 4/ petitioners argued that the petitioners are the husband, children and mother of the deceased, who worked as Assistant Engineer in N.T.R. Health University, Gunadala, Vijayawada; that while the deceased was driving her vehicle on 16.03.1999, one lorry driven by the first respondent in a rash and negligent manner, came at high speed and ran over her, due to which she sustained grievous injuries and died; that the petitioners are the dependants on the income of the deceased; that the Tribunal rightly considered that P.R.C. was introduced with effect from 01.07.1998, though it was paid in the year 1999 and rightly assessed the income of the deceased as Rs.6,859/- and the gross income as Rs.6,076/- and awarded just and reasonable compensation and therefore, the order of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

12. Though notice was served on respondent No.5, none appeared to argue on his behalf.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant/third respondent is liable to

pay compensation to respondent Nos.1 to 4/petitioners or not?

2. Whether the appellant/third respondent is entitled to set aside the award passed by the Tribunal or not?

14. **POINTS:** A perusal of the evidence available on record shows that PW.4 working as Lower Division Clerk in N.T.R. Health University witnessed the accident on 16.03.1999. According to him, one lorry bearing No.AP.7V.3476 driven by the first respondent came from opposite direction and dashed the vehicle of the deceased. Due to the said impact, she fell down and the left front tyre of the lorry ran over the moped, due to which she sustained grievous injuries and died while undergoing treatment. To prove the accident, the petitioners filed Ex.A1 copy of the First Information Report and Ex.A8 copy of the Charge Sheet. Thus, from the perusal of these documents coupled with the evidence of eye witness, it is proved that the accident occurred due to rash and negligent driving of the first respondent and in that accident, the deceased sustained grievous injuries and died.

15. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the appellant pressed two points.

First is that the deceased is not getting net salary of Rs.6,076/-p.m, but he is getting only Rs.4,517/-p.m only and as such, the Tribunal erred in taking the net salary as Rs.6,076/-p.m. A perusal of the record shows that a letter was addressed by the Insurance Company to the Registrar, N.T.R. Health University regarding the particulars of the salary of the deceased. PW.3-the financial officer of N.T.R. Health University categorically stated that the deceased was entitled for P.R.C. 1999 and as per the P.R.C, she will get Rs.6,859/- p.m including the allowances at the time of her death. Ex.A11 is the certificate issued by the University. The petitioners also filed Exs.X1 to X4, which shows that P.R.C. of 1999 was introduced with effect from 01.07.1998. It is no doubt that the accident was occurred on 16.03.1999 and she died while undergoing

treatment. Therefore, the Tribunal rightly considered that the deceased would be entitled for Rs.6,859/- in view of P.R.C. 1999 and after deducting the lawful deductions, rightly fixed the amount of Rs.6,076/- as net salary. A perusal of the award passed by the Tribunal shows that the Tribunal after deducting 1/3rd of the salary towards personal expenses, assessed the monthly salary available for the dependants as Rs.4,050-67ps. As per Ex.A10 certificate issued by the N.T.R. Health University, the date of birth is 30.01.1963. Thus, it shows that as on 16.07.1999, i.e., on the date of accident her age was 36 years. Thus, the Tribunal after applying the relevant multiplier '14.406', rightly came to the conclusion that the petitioners are entitled to Rs.7,00,247.43ps (rounded to Rs.7,00,300/-) as compensation. A perusal of the award further shows that the Tribunal has also awarded Rs.18,000/- towards medical expenses, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. Therefore, the Tribunal rightly fixed the quantum of compensation of the deceased as Rs.7,40,300/-, for which the petitioners are entitled and the said finding of the Tribunal needs no interference.

16. The other contention of the learned counsel for the appellant is that the first petitioner is working as a lecturer in a Polytechnic College and earning Rs.12,000/- p.m and he is not the dependant on the income of the deceased. To prove this fact, there is no oral or documentary evidence produced by the appellant. Therefore, as the appellant failed to prove this fact and also has not made out any case to interfere with the award, I am of the view that all the petitioners are entitled for compensation and as such the award passed by the Tribunal needs no interference.

17. Accordingly, the appeal is dismissed. No order as to costs.

18. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 11.09.2015
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