

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

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M.A.C.M.A.No.129 of 2013

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Between:

Mohd. Akber and another

.. Appellants

And

M/s.Kamadhenu & Co., rep.by Kamal Kumar Agarwal and another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 07.08.2015

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE T. SUNIL
CHOWDARY**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes/No

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.129 of 2013

JUDGMENT:

This appeal is filed by the petitioners-claimants challenging the

judgment and award, dated 21.11.2012 passed in M.V.O.P.No.2033 of 2010 on the file of the Motor Vehicle Accident Claims Tribunal-cum-XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad, wherein the Tribunal awarded compensation of Rs.1,97,000/- against the claim of Rs.2,00,000/-.

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 file the present appeal, in brief, are as follows:

On 14.05.2010 at about 9.30 p.m. the driver of the auto bearing No.AP 11 Y 0013 had driven the same in a rash and negligent manner and dashed Smt.Shahajadi Begum when she was crossing the road at IBP petrol bunk, Hyderabad. The accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 11 Y 0013 against whom the Station House Officer, Pahadisharief Police Station, registered a case in Crime No.181 of 2010 under Section 337 IPC and subsequently altered the Section of law to Section 304-A IPC. Due to injuries sustained in the accident, Smt.Shahajadi Begum (herein after referred to as 'the deceased') died on 16.05.2010. By the time of accident, the deceased was aged about 55 years and used to earn Rs.3,500/- per month. The petitioners No.1 and 2 are sons of the deceased. The auto bearing No.AP 11 Y 0013 which belongs to the first respondent was insured with the second respondent with effect from 11.09.2009 to 09.09.2010 vide policy No.70506577. Hence, the present petition claiming compensation of Rs.2.00 lakhs.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the material averments made in the petition including the manner of the accident, age and income of the deceased. The petitioners are not dependants on the income of the deceased. It is the duty of the petitioners to prove that the driver of the

auto was having valid and affective driving licence as on the date of accident. Hence, the petition may be dismissed.

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

1. Whether the deceased died in the accident on 14.05.2010 due to the rash and negligent driving of the driver of auto bearing No.AP 11 Y 0013?
2. Whether the petitioners are entitled to any compensation? If so, to what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B1 copy of insurance policy was marked.

7. On appraising 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 auto bearing No.AP 11 Y 0013, which resulted the death of the deceased and allowed the O.P. by awarding compensation of Rs.1,97,000/- with interest at 6% per annum from the date of filing of the petition till the date of realisation.

8. Feeling aggrieved by the judgment and award passed by the Tribunal, the petitioners-claimants preferred the present appeal.

9. In spite of service of notice, none appeared on behalf of the respondents. Hence, I am inclined to dispose of the appeal on merits.

10. The contention of the learned counsel for the petitioners-appellants is three fold:

1. The Tribunal has not considered the income of the deceased

in
right perspective.

2. The Tribunal awarded a meagre amount under different heads.

3. The Tribunal ought to have awarded interest at 12% per annum.

11. Basing on the above contentions, the points that arise for consideration in this appeal are as follows:

1. Whether the Tribunal has awarded just and reasonable compensation or not?
2. Whether the Tribunal committed any error while awarding the interest at 6% per annum?

Both points are interlinked to each other, hence I am inclined to deal both points simultaneously to avoid repetition of facts.

12. **POINTS 1 and 2** : As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 11 Y 0013. Issue No.1 became final in view of non-filing of appeal by the respondents. The Tribunal has assigned cogent and valid reasons to its findings on issue No.1. 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 auto, which resulted the death of the deceased.

13. By the time of accident, as per the Post-mortem Certificate, the deceased was aged about 60 years. One may not be in a position to attend coolie work regularly at the age of 60 years. Absolutely there is no material on record to establish the avocation of the deceased by the time of accident. It appears the Tribunal has arrived at a conclusion that the deceased may earn Rs.1600/- per month by taking into consideration the prevailing rate of wages. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the

petitioners that the amount of compensation awarded by the Tribunal is not just and reasonable under the head of loss of earnings.

14. The Tribunal has awarded an amount of Rs.5,000/- towards cremation charges. In view of the decision of the Hon'ble Apex Court in **RAMILABEN CHINUBHAI PARMAR AND OTHERS v. NATIONAL INSURANCE COMPANY AND OTHERS**^[1], rendered on 23-04-2014 in Civil Appeal Nos.6091-6092 of 2011, I am inclined to award an amount of Rs.50,000/- under all conventional heads. The claimants are entitled to get an amount of Rs.50,000/- under all conventional heads instead of Rs.5,000/-. The compensation awarded under various heads is as follows:

Loss of earnings	: Rs.1,92,000/-
Conventional charges	: Rs. 50,000/-
Total amount of compensation	: Rs.2,42,000/-.

15. The Tribunal awarded interest at 6% per annum. While awarding the rate of interest, the Tribunal has to take into consideration the prevailing interest rate as well as the guidelines issued by the Reserve Bank of India from time to time. Having regard to the facts and circumstances of the case, I am of the considered view the petitioners are entitled for interest at 7.5% per annum from the date of petition till the date of realisation.

16. Accordingly, M.A.C.M.A. is partly allowed enhancing the compensation from Rs.1,97,000/- to Rs.2,42,000/- with interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. Petitioners 1 and 2 are equally entitled for the enhanced amount of compensation. The petitioners are entitled to Rs.42,000/-, which is more than their claim, with interest and costs thereon, subject to payment of court fee. No costs.

17. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

07th August, 2015
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[\[1\]](#) II (2014) ACC 353 (SC) = 2014 ACJ 1430