

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.126 OF 2013

JUDGMENT:

1 This appeal, under Section 173 of M.V. Act, is filed assailing the judgment and award dated 20.10.2012 passed in M.V.O.P.No.663 of 2011 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Guntur.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 29.05.2011 at about 5.00 PM, Vattikonda Jagadish @ Jagat Brahma along with two others was proceeding on a motorcycle from Abbayapalem village to Marturu and when they reached near old Puttavaripalem village of Santhamagalur Mandal on Addanki – Narketpalli road, they stopped the motorcycle on seeing a TATA Sumo Car bearing No.AP 27 W 8695, which was coming in opposite direction. In the meanwhile, the driver of the said TATA sumo drove the same in a rash and negligent manner and dashed against the motorcycle, causing instantaneous death of Jagadish (hereinafter referred to as 'the deceased'). In connection with the said accident, the Station House Officer Santhamagalur Police Station registered a case in Cr.No.38 of 2011 against the driver of the TATA Sumo for the offence punishable under Section 304-A of IPC. By the date of accident, the deceased was aged about 18 years and was earning Rs.6,000/- p.m. by doing mason work. The petitioners are parents of the deceased. The TATA Sumo Car bearing No.AP 27 W 8695, which belongs to the first respondent was

insured with the second respondent as on the date of accident and hence the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3.00 lakhs to the petitioners.

5 First respondent remained ex parte. Second respondent filed written statement denying the material allegations made in the petition including the manner of accident and age and income of the deceased. The accident occurred due to the rash and negligent driving of the motorcycle by the deceased and that there was no negligence on the part of the driver of the TATA Sumo Car bearing No.AP 27 W 8695. The petitioners are not entitled to claim compensation unless they establish that the driver of the TATA Sumo was 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.

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

- i. Whether the accident occurred on 29.5.2011 at about 6.00 PM is due to the rash and negligent driving of the driver of the motor vehicle bearing No.AP 27 W 8695 resulting in the death of Vattikonda Jagadish @ Jagat Brahma.
- ii. Whether the petitioners are entitled to claim compensation? If so, to what amount?
- iii. Whether the respondents 1 and 2 are liable to pay compensation?

7 During the course of trial, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the 2nd respondent R.Ws.1 and 2 were examined and Ex.B.1 was marked.

8 Having appreciated the material available on record, the

Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the TATA Sumo Car bearing No.AP 27 W 8695 as well as the rash and negligent driving of the motorcycle by the deceased in the ratio of 50% : 50% and allowed the petition in part by awarding compensation of Rs.1,60,000/- by restricting the same to Rs.80,000/- with interest at 7.5% p.a. and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Being dissatisfied with the said amount of compensation, the claimants filed the present appeal.

9 The learned counsel for the petitioners submitted that the Tribunal has not considered the oral testimony of P.W.2 and the recitals of Exs.A.1, A4 and A.5 in right perspective and arrived at a conclusion that the deceased was also equally responsible to cause the accident. He further submitted that the Tribunal committed error while awarding lump sum amount towards compensation.

10 *Per contra*, the learned standing counsel for the second respondent submitted that the Tribunal has rightly considered the oral and documentary evidence and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the rider of the motorcycle i.e. the deceased and the driver of the TATA Sumo Car bearing No.AP 27 W 8695. He further submitted that the Tribunal has awarded just and reasonable compensation.

11 Now the point that falls for consideration in this appeal is:

1. “Whether the Tribunal is justified in apportioning the negligence on the part of the driver of the TATA Sumo and the deceased in the ratio of 50% : 50%?”

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

Point No.1:

12 The oral testimony of P.W.1 is no way helpful to the case of the petitioners to prove the manner of accident. P.W.2 and R.W.2 are the eyewitnesses to the accident. If the testimony of P.W.2 is taken into consideration, the accident occurred due to rash and negligent driving of the driver of the TATA Sumo Car bearing No.AP 27 W 8695. As per the testimony of R.W.2, the deceased had driven the motorcycle in a rash and negligent manner and dashed against the TATA Sumo Car. As per the testimony of R.W.2, the TATA sumo was damaged in the accident. The fact remains that by the time of accident, three persons were travelling on the motorcycle. The claimants have not produced the driving licence of the deceased. It is not uncommon to drive motorcycle even without proper driving licence. The possibility of rash and negligence on the part of the deceased cannot be ruled out completely in view of the recitals of Exs.A.1 and A.2. After considering various case law, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving on the part of the deceased as well as driver of the TATA Sumo Car bearing No.AP 27 W 8695. The negligence was apportioned in the ratio of 50% : 50%. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the well considered findings of the Tribunal on issue No.1. I am fully agreeing with the findings recorded by the Tribunal 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 contributory negligence

on the part of the driver of the TATA Sumo Car bearing No.AP 27 W 8695 as well as the deceased in the ratio of 50% : 50%. The point is answered accordingly.

Point No.2:

13 The Tribunal awarded an amount of Rs.1,50,000/- under the head loss of future earnings. By the time of accident, the deceased was aged 18 years. In view of the principle enunciated in *Munna Lal Jain v Vipin Kumar Sharma*^[1], the Tribunal or the Court has to take into consideration the age of the deceased if he is unmarried and not the age of the parents in order to adopt the appropriate multiplier. As per the ratio laid down in *Sarla Verma Vs. Delhi Transport Corporation*^[2], the appropriate multiplier for the age group of 15 to 25 is 18. It is not uncommon in the villages to attend cooli work and some other work even at the age of 16 years. Had the deceased been alive, certainly he would have helped the petitioners and looked after their welfare in their old age. Due to the untimely death of the deceased, the petitioners lost their financial support. Taking into consideration the age of the deceased, I am of the considered view that the deceased might have earned Rs.3,000/- p.m. In view of the principle enunciated in the Sarla Verma case (supra), 50% of the income shall be deducted towards personal expenses of the deceased. In that view of the matter, the contribution of the deceased to the family would come to Rs.1,500/- p.m. or Rs.18,000/- p.a. Thus the loss of dependency would come to Rs.18,000/- X 18 = 3,24,000/-. The Tribunal has rightly awarded Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The compensation awarded under various heads is as follows:

Loss of Dependency:	Rs.3,24,000/-
Loss of Estate:	Rs. 5,000/-
Funeral expenses:	Rs. 5,000/-

TOTAL:	Rs.3,34,000/-

14 In view of the finding given on Issue No.1, the petitioners are entitled to Rs.1,67,000/- i.e. 50% of the compensation amount. Petitioner Nos.1 and 2 are equally entitled to the amount of compensation. The petitioners are also entitled to interest @ 7.5% p.a. from the date of petition till the date of deposit. The point is answered accordingly.

15 In the result, the appeal is allowed in part by enhancing the amount of compensation from Rs.80,000/- to Rs.1,67,000/- with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal shall stand closed. No order as to costs.

T. SUNIL CHOWDARY, J

Date: 14th August, 2015
Kvsn

[\[1\]](#) (2015) 6 SCC 347

[\[2\]](#) (2009) 6 SCC 121