

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.936 OF 2009

JUDGMENT:

1 This appeal is preferred by the petitioners-claimants assailing the judgment and decree dated 21.11.2008 passed in O.P. No.1919 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-XXII Additional Chief Judge, Hyderabad.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed in the O.P.

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

4 On 26.10.2007, Bangaru Balakrishna (hereinafter referred to as 'the deceased') was proceeding on a Tanga from Bahadurpura Housing Board Colony to Puranapool. In the meanwhile, driver of the lorry bearing No.AP 05 X 0940 had driven the same in a rash and negligent manner and hit the Tanga, due to which the deceased sustained multiple injuries and died on the spot. The Station House Officer, Bahadurpura Police Station registered a case in Crime No.242 of 2007 under Section 304-A IPC against the driver of the lorry. By the time of the accident, the deceased was unmarried, aged about 20 years and used to earn Rs.6,000/- per month. The petitioners are dependants on the income of the deceased. The lorry, which belongs to the first respondent, was insured with the second respondent with effect from 04.12.2006 to 03.12.2007. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.6,00,000/- to the petitioners with interest and costs.

5 The first respondent filed counter contending that he sold away the said lorry to one Sri K.Prabhakar Rao, Kakinada, East Godavari District on 23.01.2007. The vehicle in question was transferred in the name of K.Prabhakar Rao. Therefore, this respondent is not necessary and proper party to the petition. The amount of compensation claimed by the

petitioners under various heads is highly excessive and exorbitant. Hence the petition is liable to be dismissed so far as this respondent is concerned.

5, The second respondent filed counter denying the material averments made in the petition, *inter alia*, contending that the first respondent had violated the terms and conditions of the police by entrusting the lorry to the person who was not having valid and effective driving licence. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Therefore, this respondent is not liable to pay compensation to the petitioners. Hence the petition may be dismissed so far as this respondent is concerned.

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

- i. Whether the accident took place on 26.10.2007 at about 10 A.M. due to the rash and negligent driving of the lorry bearing No.AP 05 X 0940 by its driver?
- ii. Whether the petitioners are entitled to compensation? If so, to what amount and from whom?
- iii. To what relief?

7 During the course of the trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.9 were marked. On behalf of the respondents, no oral evidence was let in, but Ex.B.1-policy was marked.

8 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 and awarded compensation of Rs.1,75,000/- to the petitioners. Not being satisfied with the said amount of compensation, the claimants preferred this appeal.

9 Heard Sri B.Venkat Reddy, learned counsel for the appellants – claimants, Smt.Anita Chander, learned counsel for the first respondent and Sri A.Ramakrishna Reddy, learned counsel for the second

respondent.

10. The contention of the learned counsel for the petitioners is two fold:

a. The Tribunal has not assessed the income of the deceased in right perspective and awarded meager amount towards compensation.

b. The Tribunal has not awarded just and reasonable compensation.

11 Per contra, Sri A.Ramakrishna Reddy, the learned counsel for the second respondent-insurance company submitted that the Tribunal has awarded just and reasonable compensation by considering the material available on record and therefore, the appeal is liable to be dismissed.

12 Now, the point that arises for consideration in this appeal is:

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

Point:

13 As per the finding of the Tribunal, on issue No.1, the accident occurred due to rash and negligent driving of the driver of the lorry. The finding recorded by the Tribunal, on issue No.1, became final in view of the non filing of the appeal or cross objections by the second respondent–insurance company. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Therefore, this Court is of the opinion that the accident had occurred due to rash and negligent driving of the driver of the lorry.

14 The deceased was an unmarried person. In case of unmarried person, the Tribunal has to take the age of the mother or father whichever is less, in order to determine the appropriate multiplier. The mother of the deceased was aged 38 years. As per the principle enunciated in **Sarla Verma Vs. Delhi Transport Corporation**^[1] the proper multiplier for the age group of 36 to 40 years is '15'. The Tribunal committed error while taking the multiplier as '16'. Except self-served testimony of PW.1, there was no other convincing evidence on record to prove that by the time of accident the deceased was earning Rs.6,000/- per month. The finding of

the Tribunal that the deceased may earn Rs.15,000/- per annum is not sustainable. Even in the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. Even by attending coolie work, the deceased may earn Rs.3,000/- per month. The Tribunal has to be deducted 50% of the income towards personal expenses of the deceased. The deceased may contribute (Rs.3,000 – Rs.1,500) Rs.1500/- per month and Rs.18,000/- per annum to his family.

Thus, the loss of dependency would come to Rs.18,000/- X 15 = 2,70,000/-. The Tribunal rightly awarded Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses.

15 Thus, the total compensation for which the petitioners are entitled to, under various heads, is as follows:

Loss of dependency:	Rs.2,70,000=00
Loss of estate:	Rs. 10,000=00
Funeral Expenses:	Rs. 5,000=00

TOTAL	Rs.2,85,000=00

16 The petitioners are entitled for interest at the rate of 7.5% per annum on the enhanced amount of compensation of Rs.1,10,000/-. Petitioner Nos.1 and 2 are equally entitled for enhanced amount of Rs.1,10,000/- with costs and interest thereon.

17 In the result, the appeal is allowed in part, enhancing the compensation from Rs.1,75,000/- to Rs.2,85,000/- with proportionate costs throughout. The petitioners are entitled to interest at 7.5% per annum on the enhanced amount of Rs.1,10,000/-. Petitioner Nos.1 and 2 are equally entitled for the enhanced compensation of Rs.1,10,000/-. Respondent Nos.1 and 2 are jointly and severally directed to deposit the compensation amount within two months from the date of receipt of a copy of this judgement. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 17th March, 2015.

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THE HON’BLE SRI JUSTICE T. SUNIL CHOWDARY

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M.A.C.M.A. No.936 OF 2009

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DATE: 17.03.2015

^[1] 2009 ACJ 1298 (SC)