

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.805 OF 2009

JUDGMENT:

This appeal is filed by the claimants challenging the judgment and award dated 15.11.1999 passed in O.P.No.607 of 1994 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari District, Eluru.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 22.7.1994 Seemakurthi Satyanarayana (hereinafter referred to as, the deceased) along with his relatives was proceeding to Guntur from Tadepalligudem in a car bearing No.AP 37C 4500. When the car reached Gundugolanu village, the driver of lorry bearing No.AAW 8249 had driven the same in a rash and negligent manner and dashed against the car. Due to the accident, the deceased sustained injuries and died on the spot. The Station House Officer, Denduluru Police Station registered a case in Crime No.70 of 1994 under Sections 304-A and 338 IPC against the driver of the lorry. By the time of the accident, the deceased was aged 50 years and used to earn Rs.25,000/- per month. The petitioners are the dependants on the income of the deceased. Hence, the petition claiming compensation of Rs.12,00,000/-. The respondent Nos.1, 3 and 5 are driver, insurer and owner of the offending lorry and therefore, they are jointly and severally liable to pay compensation. Hence, the petition filed claiming compensation of Rs.12,00,000/-.

4. Respondent Nos.1, 2 and 5 remained ex parte. Respondent Nos.3 and 4 filed common written statement denying all the averments made in the petition *inter alia* contending that as per the particulars of

the policy issued in respect of the lorry in question, one Mohammad Shabuddin, S/o.Ajamuddin was the owner of the lorry. The driver of the lorry was not having valid and effective driving licence as on the date of the accident and hence, the third respondent – insurance company is not liable to pay compensation to the petitioners. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition is liable to be dismissed.

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

- 1) Whether the accident occurred due to rash and negligent driving of the vehicles bearing Nos.AAW 8249 (lorry) and AP 37C 4500 (car) by its drivers-1st respondent and the driver of the car since died in the accident respectively?
- 2) Whether the petitioners are entitled to claim any compensation? If so to what amount and against which of the respondents?
- 3) To what relief?

6. During the course of the trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

7. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the lorry bearing No.AAW 8249 and allowed the petition in part by awarding compensation of Rs.1,00,000/- with proportionate costs and interest at the rate of 6% per annum from the date of petition till the date of realisation, directing the respondent Nos.1, 3, 4 and 5 jointly and severally to deposit the amount within one month from the date of the order, otherwise the amount shall carry 15% interest. Dissatisfied with the quantum of compensation awarded, the claimants preferred the

appeal.

8. Sri B.Somasekhar, learned counsel for the appellants-claimants submitted that the amount of compensation awarded by the Tribunal, under various heads, is too meager. He further submitted that the Tribunal has not followed the procedure contemplated while determining the loss of dependency. ***Per contra***, Sri Kota Subba Rao, learned standing counsel for insurance company submitted that the Tribunal has awarded just and reasonable compensation.

9. Now, the point that arises for consideration is:

Whether the Tribunal has awarded fair, just and reasonable compensation?

Point:

10. There is no much dispute between the parties with regard to the manner of accident. As per the finding recorded by the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AAW 8249, which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. There are no grounds much less valid grounds to interfere with the finding recorded by the Tribunal on issue No.1. I am fully agreeing with the finding recorded by the Tribunal on issue No.1 with regard to the manner of the accident and the factum of the death of the deceased.

11. As per the averments made in the petition, the deceased was aged about 50 years by the time of the death. The first petitioner, the wife of the deceased, was examined as P.W.1. There is no whisper in the testimony of P.W.1 with regard to the age of her husband. In the petition, the age of the first petitioner is shown as 49 years. The ages of petitioner Nos.2 to 7 are shown as 29 years, 27 years, 23 years, 31 years, 25 years and 22 years respectively. Among them, the age of the

eldest child of the deceased i.e., petitioner No.5 is shown as 31 years. No document was produced before the Tribunal to prove the age of the deceased. In the absence of documentary evidence, some guess work is inevitable even to determine the age of the deceased. Taking into consideration, the material available on record, I am of the considered view that the deceased might be aged around 56 years by the time of the death. As per **Sarla Verma v v DTC**^[1], appropriate multiplier for the age group of 56 – 60 years is '9'. The oral testimony of P.W.1 coupled with Ex.A3 to A5 reveals that the deceased was income tax assessee. As per the recitals of Exs.A3, A4 and A5, deceased was incurred losses consecutively in the business. These documents are no way helpful to the petitioners to determine the income of the deceased. The fact remains that the deceased was a businessman. Even by joining in any company, the deceased may earn something. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.3,000/- per month. After deducting 1/3rd of the income towards personal expenses of the deceased, his contribution to the family would come to Rs.2,000/- per month and Rs.24,000/- per annum. By applying the appropriate multiplier '9', loss of dependency comes to (Rs.24,000 X 9) Rs.2,16,000/-. The Tribunal also awarded an amount of Rs.50,000/- towards loss of affection and Rs.25,000/- towards loss of consortium for which the petitioners are rightly entitled to. In all, the petitioners are entitled to the compensation under the following heads:

1.	Loss of dependency	:	Rs.2,16,000
2.	Loss of love and affection :		50,000
3.	Loss of consortium	:	25,000
	Total	:	Rs.2,91,000

12. It is the duty of the Tribunal to apportion the compensation among the claimants. First petitioner is the wife and petitioner Nos.2 to 7 are the major sons and daughters of the deceased. When compared to petitioner Nos.2 to 7, the first petitioner is more dependant on the income of the deceased. Viewed from any angle, the petitioner Nos.2 to 7 are not dependants on the income of the deceased. Hence the first petitioner alone is entitled for the entire compensation amount.

13. It is not in dispute that the crime lorry was insured with third respondent-insurance company. The first respondent is the driver and the fifth respondent is the owner of the crime lorry. Therefore, the respondent Nos.1, 3 and 5 are jointly and severally liable to pay compensation to the petitioners with interest at 6% per annum from the date of petition till realization.

14. In the result, the appeal is partly allowed enhancing the compensation from Rs.1,00,000/- to Rs.2,91,000/- (Rupees Two lakhs ninety one thousand only) with proportionate costs throughout and interest at 6% per annum from the date of petition till realization. The respondent Nos.1, 3 and 5 shall jointly and severally pay the total compensation within a period of two months from the date of receipt of a copy of this order. The petition against respondent Nos.2 and 4 is dismissed without costs. Miscellaneous petitions pending if any shall stand closed.

T.SUNIL CHOWDARY, J

Date: 02.3.2015

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[\[1\]](#) (2009) 6 SCC 121