

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1070 OF 2005

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JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 09.02.2005, passed by the V Additional Chief Judge-cum-Chairman, Motor Accidents Claims Tribunal, City Civil Court, Hyderabad, in O.P.No.2598 of 2002, awarding compensation of Rs.1,97,000/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.4,40,000/- on account of the death of one Enumula Mallesh (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. The brief averments made in the petition are that the petitioner No.1 is the wife and the petitioners 2 to 4 are the children of the deceased. On 24.09.2002 at about 6.00 p.m., the deceased along with other labourers were proceeding by walk after unloading the bags in Shankarappa godown from the lorry bearing No.TN23 E 2927. At that time, the lorry bearing No.TN23 E 2927 was going on the main road from Shankarappa godown and that the driver of the lorry drove it in a rash and negligent manner, as a result the cabin of the lorry came in contact with telephone wires. Then, the wires were cut off from the pole and fell on the deceased, as a result he received electric shock and died on the spot. The police, Shadnagar Police Station registered the same as a case in Crime No.320 of 2002 for the offence punishable under Section 304-A IPC.

The deceased used to earn by doing hamali work and he was the sole breadwinner of the family. Due to sudden demise of the deceased, the petitioners were left without any income. Therefore, the petitioners prayed the Court to grant compensation of Rs.4,40,000/-.

4. The first respondent remained *ex parte* before the Tribunal.

5. The brief averments made in the written statement filed by the second respondent are as follows:

The respondent put the petitioners to prove the manner of accident, age and income of the deceased. The respondent contended that there is no rash and negligence on the part of the driver of the crime vehicle while driving the vehicle. Therefore, prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 and 2 were examined and got marked Exs.A.1 to A.6. On behalf of the second respondent, no oral evidence was adduced but got marked Ex.B.1 by consent.

7. The Tribunal, after considering the evidence on record, held that the accident was occurred due to rash and negligent driving of the driver of the lorry bearing No.TN23 E 2927 and in that accident, the deceased was died, and awarded compensation of Rs.1,97,000/- along with interest at 9% per annum.

8. Not satisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

9. The learned counsel for the appellants argued that the deceased was aged about 35 years at the time of accident, he was the sole breadwinner of the family and the petitioners are the

dependants on the earnings of the deceased. It is also argued that the Tribunal considered the monthly income of the deceased at Rs.1500/- only instead of Rs.3,000/- and in view of the judgment of the Hon'ble Supreme Court reported in *Sarla Verma and others Vs. Delhi Transport Corporation and another*^[1], the relevant multiplier is "16". It is also argued that the Tribunal has granted less amount for consortium, funeral expenses and transportation charges, and therefore, prayed the Court to grant Rs.50,000/- in view of the judgment of the Hon'ble Supreme Court reported in *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others*^[2], and finally, prayed the Court to enhance the compensation.

10. On the other hand, the learned counsel for the second respondent argued that the compensation awarded by the Tribunal needs no interference as it is a reasonable compensation awarded to the petitioners, and prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for both the parties, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellants are entitled for enhancement of compensation?

12. **Points:**

A perusal of the evidence of PWs 1 and 2 established that due to the accident, the deceased, who is the husband of the first petitioner and the father of the petitioners 2 to 4, was died. Further, there is no dispute that the said accident was occurred

due to rash and negligent act of the driver of the lorry bearing No.TN23E 2927.

13. Coming to the quantum of compensation, the Tribunal has taken Rs.50/- per day as income of the deceased and fixed the monthly income at Rs.1,500/-. The learned counsel for the appellants argued that the income of the deceased has to be enhanced to Rs.3,000/- per month. To support this aspect, there is no evidence on record. Therefore, the Tribunal has rightly taken the monthly income of the deceased at Rs.1,500/- per month, which comes to Rs.18,000/- per annum.

14. There is no dispute that in view of the judgment of the Hon'ble Supreme Court in *Sarla Verma's case* (1 supra), the relevant multiplier for the age group of 31 to 35 years is "16" and if the dependants are 4 to 6, $\frac{1}{4}$ th of the annual income has to be deducted towards personal expenses. Therefore, if $\frac{1}{4}$ th is deducted, it comes to Rs.13,500/- (Rs.18,000/- X $\frac{1}{4}$). Thus, the petitioners are entitled for Rs.2,16,000/- (Rs.13,500/- x 16) towards annual contribution to the family.

15. A perusal of the record shows that the Tribunal awarded only Rs.15,000/- towards loss of consortium, Rs.1500/- towards funeral expenses and Rs.500/- towards transportation expenses. In this regard, the learned counsel for the appellants relied on a judgment reported in *Ramilaben Chinubhai Parmar and others's case* (2 supra), wherein the Larger Bench of the Hon'ble Supreme Court granted Rs.50,000/- to the appellants therein towards conventional amount. Considering the above aspects, the appellants are entitled for Rs.50,000/- towards conventional charges.

16. Thus, the total compensation payable to the

appellants/claimants comes to Rs.2,66,000/- (Rs.2,16,000/- + Rs.50,000/-).

17. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.1,97,000/- to Rs.2,66,000/-. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service*^[3] and *Rebeka Minz and others Vs. Divisional Manager, United India Limited Insurance Company Limited and another*^[4], I am of the view that an interest at 7.5% per annum shall be awarded on the enhanced amount of Rs.69,000/- from the date of appeal till the date of realisation. It is made it clear that the first appellant/first petitioner is exclusively entitled to the conventional amount of Rs.50,000/- along with interest besides her apportioned compensation.

18. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

24.07.2015

Anr

^[1] (2009)6 SCC 121

^[2] 2014 ACJ 1430

^[3] 2013 ACJ 2733

^[4] 2012 ACJ 2328