

The Hon'ble Sri Justice T. Sunil Chowdary

MACMA Nos.328 & 888 OF 2009

COMMON JUDGMENT:

1 These two appeals are filed challenging the judgment and award dated 21.11.2008 passed in M.V.O.P.No.131 of 2007 on the file of IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge at Hyderabad wherein and whereby an amount of Rs.6,34,000/- was awarded as compensation to the claimants with interest at 7.5% p.a. as against the claim of Rs.8.00 lakhs.

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

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

4 On 16.12.2006 at about 4.00 AM one Kummari Anjaneyulu (hereinafter after referred to as 'the deceased') was on duty as watchman at the house of Nagaraju Naidu, Road No.36, Jubilee Hills, Hyderabad. At that time, the driver of the tipper bearing No.AP-9-V-9434 (hereinafter referred to as 'the crime vehicle') drove the same in a rash and negligent manner and ran over the deceased causing the instantaneous death of the deceased. In connection with the said accident, the Station House Officer, Jubilee Hills, Hyderabad registered a case in Cr.No.457 of 2006 under section 304-A of IPC against the driver of the tipper. The case of the claimants is that by the date of accident, the deceased was aged about 30 years and was earning Rs.10,000/- p.m. as production manager as well as security guard. First petitioner is wife, petitioner Nos.2 and 3 are children and petitioner Nos.5 and 6 are parents of the deceased and they are all dependants on the income of the deceased. As on the date of accident, the crime vehicle belonging to the first respondent was insured with the second respondent. Therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioners. Hence, the petitioners filed the petition under Sections 163-A and 166 of the Motor Vehicles Act claiming compensation of Rs.8.00/- lakhs from the respondents 1 and 2.

5 The first respondent, who is the owner of the crime vehicle filed counter inter *alia*, contending that the accident occurred due to the mechanical defect in the crime vehicle but not because of rashness or negligence on the part of the driver of the crime vehicle. It is further contended that as on the date of accident, the crime vehicle was insured with the second respondent, as such, the second respondent alone is liable to pay compensation, if any, to the petitioners.

6 The second respondent – insurer filed counter denying all the averments made in the petition, inter *alia*, contending that the driver of the crime vehicle was not having valid driving licence to drive the same, therefore, the petition is not maintainable against this respondent. It is further contended that the amount of compensation claimed by the claimants, under various heads, is highly excessive and exorbitant. Hence the petition is liable to be dismissed.

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

- i. Whether the deceased died in the accident that took place due to rash and negligent driving by the driver of Tipper bearing No.AP-9-V-9434?
- ii. Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
- iii. To what relief?

8 During the course of trial, on behalf of the petitioners/claimants P.Ws.1 and 2 were examined and Exs.A.1 to A.12 were marked. On behalf of the respondents, no oral evidence was let in. But the second respondent got marked the copy of the insurance policy as Ex.B.1.

9 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, held that the accident occurred due to the rash and negligent driving of the driver of the Tipper bearing No.AP-9-V-9434 belonging to the first respondent and by fixing the income of the deceased at Rs.4,500/- p.m, granted Rs.6,34,000/- as compensation to the

claimants with interest at 7.5% p.a. Dissatisfied with the compensation awarded to them, the petitioners preferred MACMA No.328 of 2009 seeking higher compensation and being aggrieved by granting of said compensation, the second respondent – insurance company filed MACMA No.888 of 2009.

10 Sri K. Venkat Ram Reddy, the learned counsel for the petitioners submitted that the Tribunal has not properly assessed the income of the deceased and awarded meager amount under various heads. He further submitted that the Tribunal, instead of 1/3rd, ought to have deducted 1/5th, towards the personal expenses of the deceased.

11 Sri Somanchi Venkateswarlu, the learned counsel for the second respondent-insurance company submitted that the amount of compensation awarded by the Tribunal is on higher side hence the same has to be scaled down.

12 Heard Sri I. Gopal Reddy, the learned counsel for the first respondent.

13 Now the point for consideration in this appeal is “**Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?**”

POINT :

14 There is no much dispute between the parties with regard to the manner of accident and factum of death of the deceased. The Tribunal has assigned cogent and valid reasons to its findings so far as the issue No.1 is concerned. There are no grounds much less valid grounds to interfere with the finding of the Tribunal on issue No.1. Therefore, I am fully agreeing with the finding of the Tribunal on issue No.1 and I also hold that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle.

15 As per the testimony of P.W.1, her husband used to earn Rs.10,000/- p.m. as Production Manager and Security Guard. As per the

testimony of P.W.3, the deceased used to earn Rs.10,000/- p.m. Exs.A.8 and A.9 are the salary certificates and Exs.A.10 to A.12 are identity cards of the deceased. As per Ex.A.8 the deceased used to earn Rs.2,700/- for 30 days. As per Ex.A.9, the deceased used to earn Rs.1,20,000/- p.a. The petitioners have not produced any document in support of Ex.A.9 salary certificate. The company which issued Ex.A.9 has not produced relevant records in support of it. It is not uncommon to issue this type of certificates in order to help the claimants in motor accident cases to get more compensation. But the fact remains that by the date of his death, the deceased was working as security guard in Jubilee Hills. Taking into consideration the oral and documentary evidence available on record, the Tribunal had come to a conclusion that the deceased used to earn Rs.4,500/- p.m. In my considered view, the Tribunal has rightly considered the material available on record and arrived at a reasonable conclusion in so far as the income of the deceased is concerned. I see no grounds much less valid grounds to interfere with the finding of the Tribunal so far as the monthly income of the deceased is concerned.

16 The Tribunal deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased. As per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***^[1], if the claimants are five in number, the Tribunal or the Court has to deduct $\frac{1}{5}^{\text{th}}$ towards personal expenses of the deceased. Thus, the deceased might have contributed Rs.3,600/- p.m. to the petitioners. By the date of his death, the deceased was aged about 30 years. Therefore, the Tribunal has rightly taken the multiplier as 17. Hence, the loss of dependency would come to Rs.3,600/- X 12 X 17 = Rs.7,34,400/-.

17 The Tribunal awarded an amount of Rs.20,000/- to the first petitioner towards loss of consortium. As seen from the record, the first petitioner was aged about 25 years by the date of the unfortunate death of the deceased. More so, the first petitioner is having two children, who are petitioner Nos.2 and 3, aged about 5 and 3 years respectively. In view of the principle laid down by the apex Court in ***Ramilaben Chinubhai Parmar***

and Others Vs. National Insurance Co. & Others^[2], I am inclined to award an amount of Rs.50,000/- as conventional amount to the petitioners instead of amount under different heads as awarded by the Tribunal.

18 A perusal of the record reveals that the Tribunal awarded Rs.2,000/- towards funeral expenses, which, in my considered view is meager. Having regard to the facts and circumstances of the case, I am inclined to award an amount of Rs.6,000/- towards funeral expenses.

Thus, the compensation awarded under the various heads is as follows:

Loss of dependency:	
Rs.7,34,400/-	
Amount under Conventional Head:	Rs.
50,000/-	
Funeral expenses:	Rs. 6,000/-
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	TOTAL:
Rs.7,90,400/-	
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19 The first respondent being the owner of the tipper bearing No.AP-9-V-9434 is vicariously liable for the wrongful acts done by his driver during the course of employment. The crime lorry was insured with the second respondent as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent.

20 In the result, MACMA No.328 of 2009 is partly allowed, the award passed by the Tribunal is modified, and an award is passed for Rs.7,90,400/- in favour of the petitioners, against the respondents with interest at 7.5% p.a. throughout. Consequently, MACMA No.888 of 2009 is dismissed. Parties are directed to bear their own costs in these appeals.

Petitioner Nos.2 and 3 alone are entitled to the enhanced amount of compensation and the same shall be kept in fixed deposit in any nationalized bank till they attain majority.

21 As a sequel, miscellaneous petitions, pending in these appeals, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: February 19, 2015.

kvsn

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

[\[2\]](#) (2014 ACJ 1430)