

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.673 of 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the petitioners in O.P.No.385 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short, 'the Tribunal'), being not satisfied with the judgment and award, dated 22.09.2008, whereby and whereunder a sum of Rs.3,09,880/- was awarded as against Rs.6,00,000/-.

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

3. The facts leading to filing of the appeal, in brief, are as follows:

The petitioners filed a petition claiming compensation of Rs.6,00,000/- for the death of the deceased in a motor vehicle accident that occurred on 02.06.2007. The case of the petitioners is that on the date of accident, the deceased boarded in an auto at Kothur 'B' village to go to his native place and when the auto reached Mirzapur 'B' village, the driver of the tractor and trailer bearing Nos.AP.23.E.2306 and AP.23.T.1874 (for short, 'the crime vehicle') had driven the same in a rash and negligent manner and dashed the auto. Due to accident, the deceased received multiple injuries and died on the spot. The Station House Officer, Hadnoor registered a case in Crime No.43 of 2007 under Sections 337 and 304-A I.P.C. against the driver of the crime vehicle. At the time of death, the deceased was aged about 35 years and used to earn Rs.10,000/- per month as a skilled labourer. The petitioners are the dependents on the income of the deceased. The first respondent is the owner of the crime vehicle, which was insured with the second respondent – Company as on the date of

accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. Hence, the petition.

4. The first respondent filed counter *inter alia* contending that there was no rashness or negligence on the part of the driver of the crime vehicle and the crime vehicle was insured with the second respondent – Company as on the date of accident i.e., 02.06.2007. The driver of the crime vehicle was having valid and effective driving licence as on the date of accident.

5. The second respondent – Insurance Company filed counter denying the material averments *inter alia* contending that there was no rashness or negligence on the part of the driver of the crime vehicle and the deceased himself was responsible to cause the accident. It is the duty of the petitioners to prove the rash and negligence, if any, on the part of the driver of the crime vehicle. The accident occurred due to the overloading of the auto. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Therefore, the second respondent is entitled to seek protection under Sections 147, 149 and 170 of the Act.

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

1. Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
2. Whether the petitioners are entitled for compensation, if so, at what quantum and from whom?
3. To what relief?

7. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the second respondent, no oral evidence was adduced and Ex.B.1 – Policy was marked.

8. The Tribunal, on appraisal of material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and allowed the petition in part by awarding compensation of Rs.3,09,880/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

9. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners/claimants preferred the present appeal.

10. Sri T.Raghunandan Reddy, Advocate, representing Sri P.Venkat Reddy, the learned counsel for the appellants/petitioners, submitted that the Tribunal has not rightly considered the oral testimony of PWs.1 and 2 and awarded meagre amount. He further submitted that the Tribunal has not awarded just and reasonable compensation under various heads.

11. Per contra, Sri E.Venugopal Reddy, the learned Standing Counsel for the United India Insurance Company Limited (second respondent), submitted that the Tribunal awarded just and reasonable compensation. He further submitted that the petitioners failed to establish the income of the deceased.

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

Whether the Tribunal has awarded fair, just and reasonable compensation to the petitioners or not?

13. **Point:**

The Tribunal has given a specific finding that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. The Tribunal arrived at such a conclusion basing on the oral testimony of PWs.1 and 2 and Exs.A.1 to A.4. Respondent Nos.1 and

2 did not choose to file an appeal challenging the finding of the Tribunal on issue No.1 with regard to the manner of the accident and *factum* of death of the deceased. The finding recorded by the Tribunal so far as the manner of accident and *factum* of death of the deceased became final. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle which resulted in the death of the deceased.

14. The predominant contention of the learned counsel for the appellants/petitioners is that the Tribunal has not correctly assessed the monthly income of the deceased. As per the oral testimony of PW.1, her husband (deceased) used to earn Rs.10,000/- per month as an agriculturist and also skilled labourer. Except the self-served testimony of PW.1, there is no other convincing evidence to prove the avocation and income of the deceased. In the absence of documentary evidence, some guess work is inevitable to assess the income of the deceased. Basing on the material available on record, the Tribunal arrived at a conclusion that the deceased may earn Rs.2,500/- per month. At this juncture, the learned counsel for the appellants/petitioners has drawn my attention to **Sanobanu Nazirbhai Mirza v. Ahmedabad Municipal Transport Service**^[1] and **Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy**^[2]. As per the principle enunciated in the cases cited supra, the Tribunal or the Court has to assess the income of the deceased basing on his avocation and other attending circumstances. The Tribunal or the Court has to take into consideration the facts and circumstances of the each case while determining the income of the deceased. As per the averments made in the petition, the deceased is a skilled labourer. No doubt, the petitioners have not produced any documentary evidence to establish the income. Taking into consideration the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.4,000/- per month.

Out of which 1/3rd shall be deducted towards his personal expenses, the deceased may contribute Rs.2,667/- per month. Per annum it comes to Rs.32,004/-. In Ex.A.4 - Post-mortem report, the age of the deceased is shown as '40' years. As per **Sarla Verma v. Delhi Transport Corporation**^[3], the appropriate multiplier is '15'. The loss of dependency comes to Rs.4,80,060/- (32,004 x 15). The Tribunal awarded an amount of Rs.10,000/- towards loss of consortium. The Tribunal or the Court has to take into consideration the age of the deceased while awarding compensation under the head of loss of consortium. Petitioner Nos.2 and 3 being the children of the deceased have deprived of love and affection of their father.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in **Ramilaben Chinubhai Parmar v. National Insurance Company**^[4], the petitioners are entitled an amount of Rs.50,000/- under the conventional heads.

Thus, in all, the amount of compensation to which the petitioners are entitled under various heads is as follows:

Loss of dependency	-----	Rs.4,80,060/-
Conventional heads	-----	Rs. 50,000/-
		=====
Total:	-----	Rs.5,30,060/-
		=====

16. Therefore, I am of the considered view that the compensation awarded under both heads is just and reasonable to meet the ends of justice. Petitioner Nos.1 to 3 are equally entitled to receive the enhanced compensation. The first respondent being the owner of the crime vehicle is vicariously liable for the wrongful acts done by her employee during the course of employment. The crime vehicle was insured with the second respondent – Company and Ex.B.1 – Policy

was in force as on the date of accident. Hence, the second respondent has to indemnify the liability of the first respondent. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

17. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.3,09,880/-/- to Rs.5,30,060/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

28th January, 2015
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[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2014 ACJ 1388

[\[3\]](#) . 2009 ACJ 1298

[\[4\]](#) 2014 ACJ 1430