

THE HON'BLE SMT JUSTICE ANIS

MACMA.NO.1289 OF 2005

JUDGMENT:

1) 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 29.03.2005 passed by the Motor Accidents Claims Tribunal-cum-Principal District Judge, Ranga Reddy District at L.B.Nagar, in O.P.No.1102 of 2001 awarding compensation of Rs.3,42,266/-.

2) The appellants herein are mother, widowed wife and son of the deceased M.A.Aleem (herein after referred to as 'deceased'). They filed the above said O.P., under Section 166 of the Act claiming compensation at Rs.4,50,000/- on account of the death of the deceased in a motor vehicle accident that occurred on 09.09.2001.

3) For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4) The brief averments made in the petition are that on 09.09.2001 the deceased was proceeding from Narsingi on Hero Honda Splendour bearing No.A.P.28 M 4283 and when he reached near S.B.Wines, Narsingi at about 5.15 p.m., one lorry bearing No.A.P.13 T 4418 proceeding towards the same

direction in front of Hero Honda in a rash and negligent manner and at high speed, dashed a jeep bearing No.M.A.22 B 7729 which was coming in an opposite direction and due to which it over turned and dashed the Hero Honda motor cycle. As a result, the deceased fell down on the road and sustained grievous injuries and he was shifted to Osmania General Hospital, Hyderabad, where he was declared dead. The deceased died due to the rash and negligent driving of the lorry and also jeep. It is stated that the petitioner was doing business and earning Rs.3,000/- per month and contributing the same to his family. Due to the sudden death of the deceased, the petitioners lost dependency. Therefore, all the respondents are liable to pay compensation to the petitioners.

5) Brief averments made in the counter filed by the first respondent-owner of the lorry are that the petitioners are put to strict proof of all the petition averments and further denied the manner of accident and stated that there is no impact with lorry to jeep and the first respondent's lorry is insured with the second respondent-Insurance Company and the driver of the lorry is having valid driving licence to drive the lorry. Hence, the second respondent Insurance Company is liable to pay compensation to the petitioners and prayed to dismiss the

petition against him.

6) Brief averments made in the counter filed by the second respondent-Insurance Company are that it denied the petition averments and put the petitioners to prove the age and income of the deceased and loss of dependency on account of the death of the deceased. The second respondent also put the petitioners to prove that the driver of the lorry was having valid driving licence and stated that the compensation claimed by the petitioners is very high, excessive and prayed the court to dismiss the petition.

7) Before the Tribunal, the third respondent remained *exparte*.

8) Both the respondents filed counter and put the petitioners to prove the age and income of the deceased and also specifically stated that the driver of the lorry was not rash and negligent and both the respondents are not liable to pay any compensation to the petitioners and prayed the court to dismiss the petition.

9) Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the appellants/petitioners got examined as PWs.1 to 3 and got marked Exs.A-1 to A-7 on their behalf and on behalf of the respondents, RW-1 was

examined and Exs.B-1 and B-2 were marked.

10) Basing on the evidence on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 13 T 4418 and awarded compensation at Rs.3,42,266/- along with interest at 9%. Being not satisfied with the award passed by the Tribunal, the appellants/petitioners filed the present appeal for enhancement of compensation.

11) The learned counsel for the appellants argued that the Tribunal ought to have taken the multiplier '18' as the deceased is aged about 30 years and as the deceased was running Dhaba, the Tribunal ought to have taken the income of the deceased as morethan 20,000/- per annum. It is also argued that the Tribunal has not granted proper compensation under the heads of consortium and funeral expenses and prayed for enhancement of compensation. It is also argued that the Tribunal has erred in not granting interest from the date of petition, though the appellants/petitioners in the petition pleaded the same.

12) On the other hand, the learned counsel appearing for the Insurance Company argued that the Tribunal after considering the evidence of PWs.1 to 3 granted just and

reasonable compensation and the order of the Tribunal needs no interference. It is also argued that the interest at the rate of 9% per annum is very high and excessive and prayed this court to reduce the interest at the rate of 7.5% per annum.

13) Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

- 1) Whether the compensation awarded by the Tribunal is just and reasonable?
- 2) Whether the appellants/petitioners are entitled for enhancement of compensation as prayed for?

14) **POINTS:**

PW-1 is the wife of the deceased. PW-2 who is the eye witness to the incident clearly stated that due to the rash and negligent driving of the driver of the lorry, the accident occurred, in which the deceased died on the spot. As per Ex.A-4 the police registered a case against the driver of the lorry bearing No.AP.13 T 4418. Considering the evidence of PWs.1 and 2, the Tribunal rightly held that the accident occurred only due to the rash and negligent driving of the lorry bearing No.A.P.13 T 4418 and the order of the Tribunal needs no interference.

15) Insofar as the enhancement of compensation is concerned, a perusal of the evidence of PW-1 shows that her

deceased husband was running a Dhaba and he was aged about 30 years at the time of accident. PW-3 in his evidence admitted that the deceased has not maintained any record while running Dhaba and he is not an income tax assessee. Considering the evidence of PW-1, the Tribunal rightly fixed the income of the deceased as 2,500/- per month after deducting 1/3rd towards the personal expenses, came to the conclusion that the actual amount of contribution of the deceased to the family is Rs.1,667/- per month and Rs.20,004/- per annum. As per Ex.A-5 postmortem certificate and Ex.A-3 inquest report, the Tribunal took the age of the deceased as 30 years and awarded compensation of Rs.3,30,266/-, after applying the multiplier 16.51 and also awarded a sum of Rs.10,000/- towards consortium and Rs.2,000/- towards funeral expenses. In all, the Tribunal awarded an amount of Rs.3,42,226/- as compensation.

16) The contention of the learned counsel for the appellants is that the Tribunal has granted meagre compensation towards consortium, funeral expenses and transportation charges and prayed the court to enhance the compensation in view of the decision of the larger Bench of the Hon'ble Supreme Court in **RAMILABEN CHINUBHAI PARMAR**

AND OTHERS VS. NATIONAL INSURANCE CO.LTD., &

OTHERS^[1] wherein the Supreme Court awarded conventional amount at Rs.50,000/- to the widow of the deceased.

17) In view of the above decision of the Supreme Court, the petitioners are entitled to Rs.50,000/- as conventional amount. Thus the petitioners are entitled to Rs.3,42,266 + Rs.50,000/- = Rs.3,92,226/- as compensation. Coming to the contention of the appellants, the Tribunal has not awarded any interest on the amount of compensation to the appellants from the date of petition. Perusal of the original petition clearly shows that the appellants/petitioners prayed the Tribunal to grant interest at the rate of 18% per annum from the date of petition, till the date of realisation. The Tribunal erred in not granting interest on the amount of compensation to the appellants from the date of petition. The enhanced compensation amount shall carry interest at 9% per annum 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 V. AHMEDABAD MUNICIPAL TRANSPORT SERVICE^[2] & REBEKA MINZ AND OTHERS V. DIVISIONAL MANAGAER, UNITED INDIA

INSURANCE COMPANY LIMITED AND ANOTHER^[3]. In total, the appellants/petitioners are entitled to total compensation of Rs.3,92,226/-.

18) Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.3,42,226/- to Rs.3,92,226/-. The enhanced amount of Rs.3,92,226/- shall carry interest with interest at the rate of 9% per annum, from the date of petition, till the date of realisation.

19) In the result, the appeal is partly allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

ANIS J.,

Dt.18.12.2015
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[\[1\]](#)) 2014 ACJ 1430

[\[2\]](#)) 2013 ACJ 2733

[\[3\]](#)) 2012 ACJ 2328