

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1133 OF 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 21.09.2005 passed in M.V.O.P.No.96 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Court, Guntur, the claimants filed the present appeal.

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

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

4 On 05.11.2001 at about 9.30 a.m, one Shaik Jaffar Sadiq @ Jaffar was proceeding from Chintalapudi to Ponnuru as pillion rider on a scooter bearing No.AP 7C 4222 being driven the first respondent. When the scooter reached the outskirts of Chintalapudi, the rider of the scooter drove the same in a rash and negligent manner and hit a milestone. The accident occurred due to the rash and negligent driving of the rider of the scooter, against whom the Station House Officer, Ponnur Rural Police Station registered a case in Cr.No.110 of 2001 under section 304-A IPC. In the said accident, Jaffar (hereinafter referred to as 'the deceased') sustained multiple injuries on various parts of his body and died while undergoing treatment in Government hospital, Guntur. By the date of accident, the deceased was aged 21 years and used to earn Rs.5,000/- p.m as driver. First petitioner is mother and petitioner Nos.2 to 5 are unmarried brothers of the deceased. The scooter bearing No.AP-7C-4222, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,50,000/- to the petitioners. Hence the petition.

5 First respondent remained ex parte. Second respondent filed counter denying the material averments made in the petition inter *alia* contending that this respondent is not liable to pay compensation to the petitioners unless the petitioners establish that the rider of the scooter was having valid and effective driving licence as on the date of accident. The amount of compensation claimed

by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed against this respondent.

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

- i. Whether the accident took place due to rash and negligent driving of the driver sic. rider of the scooter No.AP-7C-4222?
- ii. Whether the petitioners are entitled to claim compensation, if so, what amount and from which of the respondents?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the rider of the scooter bearing No.AP-7C-4222, which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.1,60,000/-, directing the respondent Nos.1 and 2 to pay the same with interest at 6% p.a. from the date of filing of the petition till the date of deposit. Being dissatisfied with the said amount of compensation, the claimant filed the present appeal.

9 Heard Sri B. Parameswara Rao, the learned counsel for the petitioners / appellants. The respondent Nos.1 and 2, having received notices, did not choose to appear. Hence, I am inclined to dispose of the appeal on merits.

10 Sri B. Parameswara Rao, the learned counsel for the petitioners submitted that the Tribunal discarded Ex.A.5 on flimsy grounds. He further submitted that the Tribunal awarded meagre amount of compensation.

11 Now the point that falls for consideration in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not?”

Point:

12 The finding of the Tribunal that the accident occurred due to the rash and negligent driving by the rider of the scooter bearing No.AP-7C-4222 has become final in view of non-filing of the appeal or cross-objections by the respondent Nos.1 and 2. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the rider of scooter bearing No.AP-7C-4222, which resulted in the death of the deceased.

13 By the date of death, the deceased was an unmarried person. Except the self-serving testimony of P.W.1, there is no other convincing evidence available on record to establish that the deceased was earning Rs.5,000/- p.m. As per Ex.A.5, the deceased has obtained driving licence in the year 1998 to drive light motor vehicle. The Tribunal has taken the notional income of the deceased as Rs.15,000/- p.a. Taking into consideration the facts and circumstances of the case, even by attending cooli work, the deceased may earn Rs.2,400/- p.m. As per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***, the Tribunal or the Court has to deduct 50% of the income towards personal expenses of the deceased in case of an unmarried person. Therefore, the deceased may contribute Rs.1,200/- p.m. or Rs.14,400/- p.a. to the family. The Tribunal committed error while deducting 1/3rd towards personal expenses of the deceased.

14 By the date of accident, first petitioner who is the mother of the deceased was aged about 39 years. As per the ratio laid down in ***Sarla Verma (supra)*** for the age group of 36 to 40 years, the appropriate multiplier is 15. Thus the loss of dependency would come to Rs.14,400/- X 15 = 2,16,000/-.

15 Having regard to the facts and circumstances of the case, I am inclined to award Rs.10,000/- towards funeral expense and Rs.10,000/- towards loss of estate.

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

Loss of dependency: Rs.2,16,000/-

Funeral expenses: Rs.10,000/-

Loss of estate: Rs.10,000/-

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Total: Rs.2,36,000/-

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17 The compensation awarded under the above heads is just and reasonable to meet the ends of justice. The petitioners are also entitled to interest at 6% p.a. on the enhanced amount of compensation from the date of filing of the petition till the date of deposit. The scooter bearing No.AP-7C-4222, which belongs to the first respondent was validly insured with the second respondent as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Hence the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

18 In the result, the appeal is allowed in part, the amount compensation Rs.1,60,000/- as awarded by the Tribunal is enhanced to Rs.2,36,000/- with interest at 6% p.a. throughout. The respondent Nos.1 and 2 are directed to deposit jointly and severally. However, it is made clear that the first petitioner alone is entitled to the enhanced compensation. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 13th April, 2015.

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