

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.873 OF 2009

JUDGMENT:

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This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 04.11.2008 passed in M.V.O.P.No.767 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, East Godavari District, Rajahmundry (for short, 'the Tribunal').

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 present appeal are, briefly, as follows:

On 08.09.2006, one Ganga Brahma Vijaya Balaji (hereinafter referred to as 'the deceased') was proceeding to K.Illindraparru from Navuduru Village on a motorcycle after attending the engine repairing work. When he reached near Polamuru Village, the driver of the Lorry bearing No.AP 5V 9619 had driven the same in a rash and negligent manner and hit the motorcycle. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom, the Station House Officer, Penumantra Police Station registered a case in Crime No.76 of 2006 for the offence punishable under Section 304-A I.P.C. Due to injuries, the deceased died on the spot. By the time of death, the deceased was aged about 27 years and used to earn Rs.6,000/- per month. The petitioners are dependants on the income of the deceased. The lorry which belongs to respondent No.1 was insured with respondent No.2, therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners. Hence, the petitioners filed the petition claiming compensation of Rs.5,00,000/-.

4. Respondent Nos.1 and 2 remained *ex-parte*. Respondent No.3

filed written statement denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased and there was no negligence on the part of the driver of the lorry. It is the duty of the petitioners to prove that the deceased was having valid and effective driving licence to drive the motorcycle as on the date of accident. The present petition is not maintainable for non-impleading of the insurer of the motorcycle. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

- (1) Whether the accident was occurred due to rash and negligent driving of the driver of lorry bearing registration No.AP 5V 9619 and the driver of Hero Honda motor cycle bearing registration No. AP 37L 2640?
- (2) Whether the petitioners are entitled for the compensation amount as claimed? If so, from which of the respondents?
- (3) To what relief?

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6. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.5 were marked. On behalf of the contesting respondent, no oral evidence was let in and Ex.B.1 was marked.

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7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.3,21,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal,

the petitioners preferred the present appeal.

9. Heard Sri T.V.Jaggi Reddy, the learned counsel for the petitioners and Sri T.K.Sridhar, the learned counsel for respondent No.3.

10. Learned counsel for the petitioners submitted that the Tribunal has failed to consider the income of the deceased and awarded meagre amount. He further submitted that the Tribunal has not awarded just and reasonable compensation.

11. Per contra, the learned counsel for respondent No.3 submitted that the Tribunal awarded just and reasonable compensation to the petitioners.

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

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

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Point:

13. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry. Respondent Nos.1 to 3 did not choose to file appeal or cross objections challenging the finding of the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 became final.

I am fully agreeing with the finding recorded by the Tribunal. 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 driver of the lorry which resulted in the death of the deceased.

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14. As per the oral testimony of PW.1, her husband was aged about 27 years by the time of accident. In Exs.A.2 – inquest report and A.3 – Post-mortem Certificate, the age of the deceased was shown as 27

years. Therefore, the Tribunal rightly arrived at a conclusion that the deceased was aged about 27 years by the time of the accident. As per the decision reported in **Sarla Verma v. Delhi Transport Corporation** ^[1], the appropriate multiplier for the age group of 26-30 years is '17' whereas the Tribunal wrongfully applied the multiplier as '18'. Hence, I am of the considered view that the multiplier to be taken in this case is '17'. As per the testimony of PW.1, her husband used to earn Rs.6,000/- per month. As per the testimony of PW.3, the deceased was an Engine Mechanic by profession. It is very difficult to produce evidence to prove income of the labourer or skilled workers in the villages. The Tribunal has to take into consideration the ground realities while appreciating the material available on record. The Tribunal arrived at a conclusion that the deceased may earn Rs.2,000/- per month on the ground that the petitioners have not produced any evidence. It is no doubt that the engine mechanic may not get work throughout the year. Even by attending coolie work, the deceased may earn not less than Rs.3,000/- per month. Hence, I am of the considered view that the deceased may earn Rs.3,000/- per month on average. The Tribunal deducted 1/3rd towards personal expenses of the deceased. As per the principle enunciated in **Sarla Verma's** case (supra 1), the Tribunal has to deduct 1/4th towards personal expenses of the deceased if the number of claimants are 4 to 6. In the instant case, the claims are four in number. Therefore, the deceased may contribute Rs.2,250/- per month. Per annum it comes to Rs.27,000/-. The loss of dependency comes to Rs.4,59,000/- (27,000 X 17). The Tribunal has rightly awarded an amount of Rs.15,000 towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.500/- towards transportation of the dead body. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows: _____

<u>01.</u>	<u>Loss of dependency</u>	<u>Rs.4,59,000/-</u>	-
<u>02.</u>	<u>Loss of consortium</u>	<u>Rs. 15,000/-</u>	—
<u>03.</u>	<u>Loss of estate</u>	<u>Rs. 15,000/-</u>	-
<u>04.</u>	<u>Funeral expenses</u>	<u>Rs. 2,500 /-</u>	-
<u>05.</u>	<u>Transportation of dead body</u>	<u>Rs. 500/-</u>	-
-	<u>Total:</u>	<u>Rs.4,92,000/-</u>	-

15. Petitioner Nos.1 and 2 are equally entitled for the enhanced amount of Rs.1,71,000/- i.e., Rs.85,500/- each. The petitioners are also entitled for interest on the enhanced amount at the rate of 7.5% per annum from the date of petition till the date of realisation.

16. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.3,21,000/- to Rs.4,92,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Respondent Nos.1 to 3 are jointly and severally directed to deposit the enhanced amount of compensation within two (2) months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 09.03.2015

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^[1] . 2009 ACJ 1298