

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1196 OF 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner No.1 challenging the judgment and award, dated 24.01.2003, passed in M.V.O.P.No.444 of 2000 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Cuddapah (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 09.12.1999 at about 12:00 Noon, Pappireddy Eragam Reddy got down the bus at Chitloor bus stop and proceeding towards his village. In the meanwhile, the driver of the Lorry bearing No.ATR 5669 came in a rash and negligent manner and hit Eragam Reddy. Due to accident, Eragam Reddy (hereinafter referred to as 'the deceased') sustained multiple injuries and died in Government Hospital, Rayachoty while undergoing treatment. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, Ramapuram Police Station registered a case in Crime No.71 of 1999 for the offence punishable under Section 304-A I.P.C. By the time of accident, the deceased was aged about 60 years and used to earn Rs.30,000/- per annum. The petitioners are the wife and sons of the deceased and they are dependants on the income of the deceased. The lorry, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,50,000/- to the petitioners.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the driver of the lorry was not having valid and effective driving licence as on the date of accident. It is further contended that the deceased was not an earning member as on the date of accident and the petitioners are not the dependants on his income. 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 death of the deceased Papireddy Eragam Reddy occurred due to rash and negligent driving of the lorry bearing number ATR 5669 belonging to Respondent?
2. Whether the petitioners are entitled for compensation if so what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

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.48,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, petitioner No.1 preferred the present appeal.

9. Heard Sri L.J.Veera Reddy, the learned counsel for the appellant/petitioner No.1 and Sri G.Sundara Ramayya, the learned Standing Counsel for respondent No.2 – United India Insurance Company Limited.

10. The contention of the learned counsel for petitioner No.1 is two fold: (1) The Tribunal has not rightly considered the monthly income of the deceased, and (2) The amount of compensation awarded by the Tribunal is too meagre.

11. Per contra, the learned Standing Counsel for respondent No.2 submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

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

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

Point:

13. As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased. The finding of the Tribunal on issue No.1 became final in view of non-filing of an appeal or cross objections by the respondents. The Tribunal has assigned cogent and valid reasons to its findings. 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.

14. In Exs.A.2 – certified copy of Post-mortem Certificate, and A.4 – certified copy of inquest report, the age of the deceased was mentioned as ‘60’ years. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**, the appropriate multiplier to be taken for the age group of 56 to 60 years is ‘9’. As per the averments in the petition, the deceased used to earn Rs.30,000/- per annum. Except the self-served testimony of PW.1, there is no other convincing evidence to prove the income of the deceased. It is not uncommon in the villages to attend coolie work even at the age of 60 years. Taking into consideration the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.21,000/- per annum. Out of which,

1/3rd shall be deducted towards personal expenses of the deceased. The deceased may contribute Rs.1,400/- per month to his family members. The loss of dependency comes to Rs.1,51,200/- (1,400 X 12 X 9). I am inclined to award an amount of Rs.10,000/- towards loss of consortium. Thus, the amount of compensation to which petitioner No.1 is entitled to under both heads is as follows:

01.	Loss of dependency	Rs.1,51,200/-
02.	Loss of consortium	Rs. 10,000/-
	Total:	Rs.1,61,200/-

15. The petitioners filed the petition claiming compensation of Rs.1,50,000/- only. Hence, the compensation is restricted to Rs.1,50,000/- only. Petitioner No.1 is entitled for interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the enhanced amount.

16. In the result, the Appeal is allowed by enhancing the quantum of compensation from Rs.48,000/- to Rs.1,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the enhanced amount. Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation amount. 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: 07.04.2015

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