

**HON'BLE SMT JUSTICE ANIS**

**M.A.C.M.A.No.989 of 2005**

**J U D G M E N T:**

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 12.10.2004 passed by the I Additional District Judge-cum-Chairman, Motor Vehicle Accidents Claims Tribunal, Nizamabad, in O.P.No.904 of 1997, awarding compensation of Rs.1,81,000/-.

2. The appellants herein are the widow wife and daughter of one Mangali Hashappa (hereinafter referred to as 'the deceased'). They filed the above O.P under Section 166 of the Act claiming compensation of Rs.5,00,000/- on account of the death of the deceased in a motor vehicle accident that occurred on 24.11.1997.

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 24.11.1997 at about 8:30 a.m, the deceased was standing on the road at Chiragpally village on Pune-Hyderabad road. At that time, one lorry bearing No.AP.20.U.1332 driven by its driver in a rash and negligent manner dashed the deceased, due to which he received multiple injuries and died on the spot. Police registered a case in Cr.No.80 of 1997 for the offence punishable under Section 304-A I.P.C against the driver of the lorry. According to the petitioners, the deceased was earning Rs.6,000/- p.m as a barber-cum-agriculturist. He was hale and healthy before his death. After the death of the deceased, petitioners lost their livelihood and they are the dependants on the income of the deceased. Therefore

prayed the Court to grant compensation of Rs.5,00,000/- against respondent Nos.1 & 2.

5. Before the Tribunal, the first respondent remained *ex parte*.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioners to prove the manner of accident, age and income of the deceased and denied that the driver of the lorry was rash and negligent while driving the vehicle. The second respondent also put the petitioners to prove that the driver was having valid driving license and the lorry was duly insured with the second respondent. The compensation claimed by the petitioners is very high, excessive and arbitrary and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the appellants/petitioners got examined PWs.1 to 3 and got marked Exs.A1 to A4 & C1 on their behalf. On behalf of the contesting respondent, RWs.1 & 2 got examined and Exs.B1 to B8 got marked.

8. The Tribunal having considered the oral and documentary evidence on record held that the accident occurred due to rash and negligent driving of the driver of the first respondent and in that accident, the deceased died on the spot and awarded compensation of Rs.1,81,000/- along with interest at 9% p.a. Being not satisfied by the order passed by the Tribunal, the petitioners preferred the present appeal for enhancement of compensation.

9. Learned counsel appearing for the appellants/ petitioners

argued that the deceased was working as a barber and earning Rs.6,000/- p.m. Further, he was the sole bread winner of the family. Therefore, the income of the deceased has to be taken as Rs.6,000/- p.m, but not Rs.1,500/- p.m. It is also argued that the Tribunal has not granted proper compensation under the heads of consortium, funeral expenses and transportation 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 v. National Insurance Co. Ltd., & others.***<sup>[1]</sup>, wherein the Supreme Court awarded Rs.50,000/- as conventional amount to the widow of the deceased.

10. Though notice was served on respondent No.1, none appeared to argue on her behalf.

11. On the other hand, the learned counsel appearing for the second respondent argued that the compensation awarded by the Tribunal is very high and excessive and the finding of the Tribunal needs no interference. Further, the learned counsel has not disputed about the judgment of the Hon'ble Supreme Court in ***Ramilaben Chinubhai Parmar's case*** (first cited supra), but argued to reduce the rate of interest in view of the judgment of the Hon'ble Supreme Court in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***<sup>[2]</sup>.

12. 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?

13. **POINTS:** A perusal of the evidence on record shows that there is no dispute regarding the manner of accident and the finding of the Tribunal that the deceased died in the motor vehicle accident, in which the lorry bearing No.AP.20.U.1332 was involved.

14. In so far, the enhancement of compensation is concerned, a perusal of the evidence produced by the petitioners' shows that the deceased was a barber and he died on 24.11.1997 in a motor vehicle accident. The Tribunal after considering the oral evidence, fixed the income of the deceased as Rs.1,500/- p.m and after taking the relevant multiplier '14', it fixed the total loss of dependency at Rs.1,56,000/-. This finding of the Tribunal needs no interference.

15. Now coming to the compensation awarded towards transportation of the dead body, funeral expenses, loss of estate are concerned, the learned counsel for the appellants/petitioners argued that the amounts awarded under these heads are very low, therefore prayed the Court to enhance the compensation. Admittedly, the Tribunal awarded Rs.15,000/- towards consortium, Rs.5,000/- towards transportation of the dead body and funeral expenses and Rs.5,000/- towards loss of estate. It is well settled principle of law laid down by the Hon'ble Supreme Court in ***Ramilaben Chinubhai Parmar's case*** (first cited supra) that the petitioners can be awarded Rs.50,000/- as conventional amount.

Therefore, following the said principle, the said amount is awarded to the petitioners. Thus, the appellants are entitled in total for Rs.1,56,000/- + Rs.50,000/- = Rs.2,06,000/-.

16. Therefore, in view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the

Tribunal to the appellants/petitioners from Rs.1,81,000/- to Rs.2,06,000/- along with interest at 7.5% on the enhanced amount from the date of appeal till the date of realisation. The appellant No.1/petitioner No.1 being the wife of the deceased is entitled for the enhanced amount along with interest and is permitted to withdraw the same as soon as the deposit is made. No order as to costs.

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

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**ANIS, J**

Date: 02.07.2015

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[\[1\]](#) 2014 ACJ 1430

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