

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.14 of 2013

JUDGMENT:

1 Petitioners in O.P.No.835 of 2009 on the file of
Chairman, Motor Accidents Claims Tribunal-cum-District
Judge, Nizamabad filed the present appeal under Section
173 of the Motor Vehicles Act, dissatisfied with the quantum
of compensation awarded under the Judgment and award
dated 09.07.2012 passed in the said O.P. wherein and
whereby an amount of Rs.1,85,000/- was awarded as
against the claim of Rs.6.00 lakhs.

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 10.09.2009 one Kathroji Yerranna and others
were proceeding from Vempalli to Bandalingampur in TATA
Mazic bearing No.AP-25-TV-0914. When the TATA Mazic
(hereinafter referred to as 'crime vehicle') reached Rajaiah
Petrol Pump, Balkonda, the driver of the crime vehicle drove
the same in a rash and negligent manner and dashed a
lorry bearing No.TN-34-E-3921, which was stationed on the
road margin. The accident occurred only due to the rash
and negligent driving of the driver of the crime vehicle. Due
to the accident, Kathroji Yerranna (hereinafter referred to as
'the deceased') sustained grievous injuries on various parts

of the body and died on the spot. By the date of accident, the deceased was aged 65 years and used to earn Rs.15,000/- per month. First petitioner is wife and petitioner Nos.2 to 4 are sons of the deceased and they are dependents on the income of the deceased. The crime vehicle, which belongs to the first respondent, was insured with the second respondent at the time of accident. Hence the petitioners filed the claim petition under Section 163-A of the Motor Vehicles Act seeking compensation of Rs.6.00 lakhs from the respondents.

5 The first respondent remained *ex parte*. Second respondent filed counter denying the various averments made in the petition including the manner of accident, age and income of the deceased. The driver of the crime vehicle was not having valid driving licence at the time of accident. Therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. Hence the petition may be dismissed.

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

i. Whether the accident has taken place due to rash and negligent driving of TATA Mazic bearing No.AP-25-TV-0914 by its driver?

ii. Whether the petitioners are entitled to compensation, If so, to what just amount and against whom?

iii. To what relief?

7 During the course of trial, on behalf of the petitioners P.Ws.1 to 4 were examined and Exs.A.1 to A.5 were

marked. On behalf of the second respondent no oral evidence was adduced, but copy of the insurance policy was marked as Ex.B.1.

8 On appreciation of 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 crime vehicle, which resulted in the death of the deceased and allowed the petition by awarding an amount of Rs.1,85,000/- as compensation. As stated supra, dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioners filed the present appeal.

9 The contention of the learned counsel for the petitioners is two fold. 1) The Tribunal has not considered the income of the deceased in right perspective and awarded meagre amount of compensation. 2) The compensation awarded by the Tribunal under different heads is too meagre.

10 Per contra, the learned counsel for the second respondent submitted that the petitioners filed the claim petition under Section 163-A of the M.V. Act and hence the present appeal is not maintainable. He further submitted that the Tribunal committed error in fixing the income of the deceased as Rs.4,000/- p.m.

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

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

POINT:

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12 The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased, has become final in view of non-filing of the appeal by the respondents. The claimants have filed the petition under Section 163-A of the M.V.Act. Therefore, the claimants need not prove rash and negligent act on the part of the driver of the crime vehicle. However, filing of petition under Section 163-A of the M.V. Act does not preclude or prevent the insurance company to prove the negligence on the part of the driver of the crime vehicle. In the instant case the insurance company also did not take any steps to demolish the case of the petitioners. Therefore, there is no necessity to delve into that issue elaborately in this appeal.

13 The Tribunal has taken the income of the deceased as Rs.4,000/- p.m. which comes to Rs.48,000/- p.a. As per the Second schedule annexed to Section 163-A of the Act, the maximum income to be taken is only Rs.40,000/- p.a. For one reason or the other, the Tribunal has taken the annual income of the deceased as Rs.48,000/-. By deducting 1/3rd of the income towards personal expenses of the deceased, the Tribunal assessed the contribution of the deceased to the family at Rs.32,000/- p.a.

14 As per the recitals of post-mortem examination certificate – Ex.A.3, by the date of accident, the deceased was aged about 65 years. The Tribunal has taken multiplier as ‘5’ while taking the aid of the second schedule of Section 163-A of the Act. Taking into consideration the age and other attending circumstances, the Tribunal awarded Rs.1,60,000/- towards loss of dependency.

15 The Tribunal also awarded Rs.15,000/- towards consortium, Rs.2,500/- towards funeral expenses, Rs.2,500/- towards transportation of the dead body and Rs.5,000/- towards loss of estate and thereby awarded a total sum of Rs.1,85,000/- as compensation to the petitioners for the death of the deceased.

16 The petitioners have filed the claim petition under Section 163-A of the Motor Vehicles Act. Once the petition is filed under Section 163-A of the Act, the maximum ceiling of the annual income is only Rs.40,000/-. Further, the petitioners are entitled to Rs.9,500/- only under conventional heads. Inadvertently the Tribunal has awarded Rs.1,85,000/- as compensation, to which, the petitioners, actually, are not entitled to. Admittedly, the respondents have not filed any appeal challenging the quantum of compensation awarded by the Tribunal. Therefore, this Court has no option except to confirm the award passed by the Tribunal since this is an appeal filed by the claimants seeking higher compensation.

17 For the foregoing discussion, I see no merits in this appeal. The appeal lacks merits and bonafides. Hence the appeal is liable to be dismissed.

18 Accordingly, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 27th August, 2015
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