

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.735 OF 2009

JUDGMENT:

This appeal is filed by the claimants challenging the judgment and award dated 03.9.2003 passed in O.P. No.134 of 1999 on the file of the Motor Vehicles Accidents Claims Tribunal (Additional District Judge), Nizamabad.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 20.2.1998 Sukanya (hereafter referred to as "the deceased") boarded the lorry bearing No.AP 16W 1110 as labourer and proceeding towards Nizamabad along with others. When they reached near Roopla Naik Thanda, the driver of another lorry bearing No.UP 42B 6329 had driven the same in a rash and negligent manner and dashed the lorry No.AP 16W 1110 in which the deceased was traveling. Due to the accident, the deceased sustained grievous and died on the spot. At the time of accident, the deceased was aged about 10 years and was earning Rs.3,000/- per month by attending to coolie work. The first respondent as owner of lorry bearing No.UP 42B 6329 and the second respondent as its insurer are liable to pay compensation of Rs.2,000,000/- to the petitioners, who are father and mother of the deceased, with interest and costs.

4. The first respondent filed counter denying material averments *inter alia* contending that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP 16W 1110 and there was no negligence on the part of the driver of the lorry bearing No.UP 42B 6329. The lorry in question was insured with the second respondent and therefore the second respondent alone is liable to pay compensation, if any, to the petitioners.

5. The second respondent filed counter denying material averments *inter alia* contending that there was no rashness or negligence on the part of the driver of the lorry bearing No.UP 42B 6329. The amount of compensation claimed by the petitioners is excessive and exorbitant.

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

- 1) Whether the accident was due to rash and negligent driving of the lorry bearing No.UP 42B 6329 by its driver?
- 2) Whether the petitioners are entitled to compensation. If so to what amount and from which of the respondents?
- 3) To what relief?

7. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, no oral or documentary evidence was adduced. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to rash and negligent driving of the driver of lorry bearing No.UP 42B 6329 and awarded a compensation of Rs.1,50,000/- with proportionate costs and interest at 9% per annum from the date of petition till realization. Being not satisfied with the amount of compensation awarded, the claimants preferred the appeal.

8. The respondents having received the notices in this appeal remained ex parte.

9. The contention of Sri P.Radhive Reddy, learned counsel for the appellants-claimants is that the Tribunal has not properly considered the income of the deceased and awarded meager amount.

10. As per the findings of the Tribunal the accident occurred due to rash and negligent driving of the driver of lorry bearing No.UP 42B 6329. For one reason or the other, the respondents did not file appeal challenging the finding of the Tribunal so far as the manner of the

accident is concerned. Thus the finding recorded by the Tribunal, on this aspect, has become final. Therefore, there is no necessity to reconsider this issue.

11. The point for consideration is whether the compensation awarded by the Tribunal is just and reasonable?

12. Basing on the material available on record, the Tribunal arrived at a conclusion that the deceased might have used to earn Rs.15,000/- per annum. The contention of learned counsel for the appellants is that the Tribunal has not rightly considered the income of the deceased. To substantiate the argument, he has drawn my attention to the decision in **Kishan Gopal v Lala**^[1]. Para 39 reads as follows:

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs 30,000 and further taking the young age of the parents, namely, the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in *Sarla Verma v. DTC*^[2], the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000 under conventional heads towards loss of love and affection, funeral expenses, last rites as held in *Kerala SRTC v. Susamma Thomas*^[3], which is referred to in *Lata Wadhwa v State of Bihar*^[4] and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000 under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.

13. As per the principle enunciated in the case cited supra, in case of child death, Rs.30,000/- per annum can be taken as notional income. Hence, I am inclined to consider the notional income of the deceased at Rs.30,000/- per annum. As per the principle enunciated in **Sarla Verma v DTC**^[5], in case of death of bachelor, 50% of the income shall be deducted towards personal income of the deceased. So, the deceased may contribute Rs.15,000/- per annum to her family. In order to determine the multiplier, the Tribunal has to take into

consideration the age of the father or mother whichever is less if the deceased is minor or bachelor. The age of the mother of the deceased, as on the date of accident, was 33 years. The proper multiplier that would be applicable is '16', in this case. The loss of dependency comes to Rs.2,40,000/- (Rs.15,000/- X 6). After the marriage, the daughter may not spend any amount for the welfare of parents. Even if the deceased is alive, she may not contribute any amount to the petitioners after her marriage. The Court or Tribunal shall not lose sight of this aspect. Therefore, I am of the considered view that the petitioners are entitled to Rs.1,90,000/- towards loss of dependency. Besides that the petitioners are entitled to Rs.10,000/- towards loss of love and affection. Thus, in all, the petitioners are entitled to Rs.2,00,000/- towards compensation, which is just and reasonable.

14. In the result, the appeal is allowed granting total compensation of Rs.2,00,000/- instead of Rs.1,50,000/- as awarded by the Tribunal, with costs and interest at 9% per annum through out. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 22-1-2015

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[\[1\]](#) (2014) 1 SCC 244

[\[2\]](#) (2009) 6 SCC 121

[\[3\]](#) (1994) 2 SCC 176

[\[4\]](#) (2001) 8 SCC 197

[\[5\]](#) (2009) 6 SCC 121