

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4715 OF 2004

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 order and decree dated 16.08.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Prakasam District at Ongole, in O.P.No.434 of 1998, awarding compensation of Rs.3,96,000/-.

2. The appellant Nos.1 to 4/petitioners filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.5,00,000/- on account of the death of one Gopisetty Srinivasa Rao (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 01.05.1998.

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 01.05.1998 while the deceased was coming from Shiridi to Guntur in a Maruthi Car bearing No.AP.9E.486 and when they reached near Pasamadigal outskirts, on the way one oil tanker bearing No.MH.12Q.2022 came with a high speed and dashed the Maruthi Car in which the deceased was travelling as a result the deceased died. Petitioners stated that due to the sudden death of the deceased, they suffered mental agony and therefore, prayed the Court to grant compensation along with interest at 18% p.a against the respondents.

5. Before the Tribunal, respondent No.1 remained *ex parte*.

6. The brief averments made in the written statement filed by the third respondent are that the accident was not occurred due to rash and negligent driving of the driver of the oil tanker and further put the petitioners to prove the manner of accident, age and income of the

deceased and stated that the driver of the oil tanker was having valid and subsisting driving license at the time of accident and that the compensation claimed by the petitioners is high and excessive and prayed the Court to dismiss the petition.

7. The brief averments made in the written statement 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 specifically stated that the second respondent is not liable to pay any compensation to the petitioners and prayed the Court to dismiss the petition.

8. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim the petitioners got examined PWs.1 to 5 and got marked Exs.A.1 to A.14 on their behalf. On behalf of the contesting respondents, no oral evidence was adduced but got marked Ex.B1.

9. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the oil tanker bearing No.MH.12Q.2022, due to which the deceased died and other inmates of the Maruthi vehicle sustained injuries and awarded compensation of Rs.3,96,000/- along with interest at 9% p.a.

10. Being not satisfied by the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

11. The learned counsel appearing for the appellants/petitioners argued that the deceased worked as Marketing Officer in M/s.Bhaskar Agro Chemicals and used to draw salary of Rs.10,000/- p.m. Thereafter, in the year 1994, he resigned the job and started business in seeds and fertilizers at Guntur under the name and style of M/s. Lakshmi Enterprises at Guntur and he used to earn Rs.20,000/- p.m as income

and the Tribunal without considering the evidence of the witnesses awarded only meagre compensation. Therefore, the petitioners are entitled for loss of consortium, funeral expenses and other expenses and the Tribunal granted meagre compensation to the petitioner No.1, who is the widow of the deceased and finally prayed the Court to enhance the compensation.

The learned counsel for the appellants also argued that in view of the judgment of the Hon'ble Supreme Court in ***Ramilaben Chinubhai Parmar and others v. National Insurance Co. Ltd., & others.***^[1], the petitioners are entitled for compensation of Rs.50,000/- under the head of conventional amount.

12. On the other hand, the learned counsel for the Insurance Company argued that after considering the evidence on record the Tribunal awarded just and reasonable compensation and the said finding of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

13. 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?

14. **P O I N T S:** A perusal of the evidence of the petitioner No.1 (PW.1) established that her husband/deceased used to work as Marketing Officer and draw salary of Rs.10,000/- p.m. Thereafter in the year 1994, he started to do business and he used to earn Rs.20,000/- p.m. To support the oral evidence, she got examined PWs.2 to 4. A perusal of the evidence shows that petitioner No.1 is unable to produce any evidence to show that the deceased was earning Rs.20,000/- p.m and she had not filed any income tax papers before the Tribunal.

Therefore, considering the facts and evidence on record, the Tribunal fixed the income as Rs.24,000/- p.m and by taking the relevant multiplier '16', awarded Rs.3,84,000/- towards loss of dependency. The Tribunal no doubt granted Rs.5,000/- towards consortium and Rs.2,000/- towards funeral expenses and also Rs.5,000/- towards transportation charges. A perusal of the latest judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioners in ***Ramilaben Chinubhai Parmar's case*** (first cited supra) shows that, the Hon'ble Supreme Court held that the family of the deceased is entitled for conventional amount of Rs.50,000/-. Therefore, considering the said latest judgment, I am of the view that an amount of Rs.50,000/- shall be awarded to appellants towards conventional amount and thus, the appellants are entitled in total for Rs.3,96,000/- + Rs.50,000/- = Rs.4,46,000/- as compensation. Therefore, the compensation awarded to the petitioners is enhanced from Rs.3,96,000/- to Rs.4,46,000/-.

15. Accordingly, the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.3,96,000/- to Rs.4,46,000/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

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

ANIS, J

Date: 23.12.2015

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