

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**M.A.C.M.A. No.419 OF 2014**

**JUDGMENT:**

1. This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 06.02.2011 passed in M.V.O.P.No.533 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge Court, Nalgonda.

2. For the sake of convenience, parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal.

3. The facts leading to filing of the present appeal, briefly, are as follows:

4. On 02.04.2007 one Shyamala Bala Krishna was proceeding to Raghunadhapuram Village from Alair by driving his Auto bearing No.AP-23-V-3126 and when the auto reached near Dharmareddygudem, the driver of the Tata Hitachi Hydraulic Excavator had driven the same in a rash and negligent manner and dashed against the Auto (herein after referred to the 'crime vehicle'). The accident occurred due to rash and negligent driving of the driver of the crime vehicle. Due to the injuries, Shyamala Bala Krishna (hereinafter referred to 'the deceased') died on the spot. The Station House Officer, Yadagirigutta police station registered a case in Cr.No.42 of 2007 under sections 337 and 304-A IPC against the driver of the crime vehicle. By the time of the accident, the deceased was aged about 25 years and used to earn Rs.3,000/- per month. The petitioners are the parents of the deceased and are dependants on the income of the deceased. The crime vehicle which belongs to the first respondent was insured with the second respondent company w.e.f. 03.07.2006 to 02.07.2007. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

5. The first respondent filed counter denying the manner of the accident, age and income of the deceased *inter alia* contending that the accident occurred due to rash and negligent driving of the driver of the Auto. The driver of the crime vehicle was having valid and effective driving licence as on the date of accident. The crime vehicle was insured with the second respondent company as on the date of accident, therefore, the second respondent alone has to pay compensation, if any, to the petitioners.

6. The second respondent filed counter denying the averments made in the petition including the manner of accident, age and income of the deceased *inter alia* contending that the accident occurred due to rash and negligent driving of the Auto by the deceased and there was no negligence on the part of the driver of the crime vehicle. The petitioners are not entitled to claim compensation from this respondent unless the petitioners have established that the driver of the crime vehicle was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

- i. Whether the deceased-Shyamala Bala Krishna died due to the rash and negligent driving of the Auto bearing No. AP-23-V-3126 by its driver (*sic* himself)?
- ii. Whether the claimants are entitled for the compensation, if so, what amount and from whom?
- iii. To what relief?

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8. During the course of trial, on behalf of the petitioners, P.Ws.1 to 6 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, no oral evidence was let in. but Ex.B1 was marked on

behalf of the second respondent.

9. On appraising the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.3,64,500/- directing the respondents No.1 and 2 to pay the same jointly and severally with costs and interest @ 7.5% p.a. from the date of petition till the date of realisation. Feeling aggrieved by the judgment and award passed by the tribunal, the second respondent- Insurance company preferred the present appeal.

10. The contention of the learned counsel for the second respondent is three fold.

- i. The present petition is not maintainable as the accident occurred due to rash and negligent driving of the Auto by the deceased.
- ii. The tribunal ought to have deducted 50% of the monthly income of the deceased towards his personal expenses.
- iii. The tribunal has not considered the oral and documentary evidence in right perspective and awarded compensation on assumptions and presumptions.

11. **Per contra** the learned counsel for the petitioners submitted that the accident occurred due to rash and negligent driving of the driver of the crime vehicle. She further submitted that the tribunal has awarded just and reasonable compensation.

12. Now the points that arise for consideration in this appeal are:

**1. Whether the accident occurred due to rash and negligent driving of the driver of Auto by the deceased or due to rash and negligent driving of the driver of the crime vehicle i.e., Tata Hitachi Hydraulic Excavator?**

**2. Whether compensation awarded by the Tribunal is**

**just and reasonable or not?**

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**POINT No.1 :**

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13. The tribunal has framed the issue whether the accident occurred due to rash and negligent driving of the auto by the deceased. The tribunal has given a finding that the accident occurred due to rash and negligent driving of the Auto by the deceased. The tribunal has not framed the issues in a proper manner. As seen from the testimony of PW.1, she is not an eye-witness to the accident; therefore, her testimony is no way helpful to prove the manner of the accident. As seen from the testimony of PW.2, the accident occurred due to rash and negligent driving of the driver of the crime vehicle. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Ex.A1-FIR and Ex.A4-charge sheet, the accident occurred due to rash and negligent driving of the driver of Tata Hitachi Hydraulic Excavator.

14. Basing on the recitals of the Ex-A.2-Inquest Panchanama and Ex.A3-Post Mortem Examination report, the Tribunal has arrived at a conclusion that the deceased died due to injuries sustained in a road accident that occurred on 02.04.2007. Absolutely, there is no material on record to prove the accident that occurred due to rash and negligent driving of the auto by the deceased. However, the tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the Auto bearing No.AP-16-V-3126 by the deceased. The finding recorded by the tribunal is contrary to the recitals of Ex.A1-FIR and Ex.A4-charge sheet. It appears that the tribunal has not gone through the recitals of Ex.A1 and Ex.A4 and the oral testimony of PW.2. Viewed from any angle, the finding of the tribunal that the accident occurred due to rash and

negligent driving of the Auto by the deceased is not sustainable. Basing on the oral and documentary evidence available on record, the irresistible conclusion that can be drawn is that the accident occurred due to rash and negligent driving of the driver of Tata Hitachi Hydraulic Excavator, which resulted in the death of the deceased. Hence, Point No.1 is answered in favour of petitioners against the respondent.

**POINT No.2:**

15. The predominant contention of the learned counsel for the second respondent is that the tribunal has not applied the correct multiplier while determining the quantum of compensation. A perusal of Ex.A2-inquest report and Ex.A3-Post Mortem Report reveals that the deceased was aged about 25 years by the time of his death. Admittedly, the deceased is an unmarried person. The Tribunal while placing reliance on the principle enunciated in **SARLA VERMA v. DELHI TRANSPORT CORPORATION**<sup>[1]</sup> has taken the age of the mother of the deceased as 45 years and applied multiplier '15'. The appropriate multiplier to be applicable is '14' for the age group of 41 to 45. However, as per the principle enunciated in **MUNNALAL JAIN AND ANOTHER v.VIPIN KUMAR SHARMA AND OTHERS**<sup>[2]</sup> the Tribunal or the Court has to take into consideration the age of the deceased only in order to adopt correct multiplier and not the age of the parents of the deceased in case of death of unmarried person. As per **Sarla Verma's** case(1 supra) the appropriate multiplier for the age group 15 to 25 is '18'. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, the appropriate multiplier to be applicable in this case is '18' and not '15'.

16. It is an admitted fact that the deceased was a driver by

profession. Except self-serving testimony of PW.1, there are no other convincing evidence to prove the income of the deceased. The tribunal has taken the income of the deceased as Rs.3,000/- per month. Admittedly, the claimants have not filed an appeal or cross-objections challenging the quantum of compensation. Therefore, I am of the considered view that the deceased may earn Rs.3,000/- per month. As per the principle enunciated in **Sarla Verma's** case (1 supra), the tribunal or the Court has to deduct 50% of the monthly income of the deceased (If the deceased is an unmarried person) towards his personal expenses, therefore the deceased may contribute Rs.1500/- per month to his family members. Hence, the petitioners are entitled for compensation amount of Rs.3,24,000/- (1500 x 12 x 18 = 3,24,000/-). The tribunal committed error while calculating the loss of dependency as Rs.3,60,000/- instead of 3,24,000/-. The tribunal has awarded a meagre amount of Rs.2500/- towards loss of estate and Rs.2,000/- towards funeral expenses.

17. In view of principle enunciated in **Ranjan Prakash and others V. Divisional Manager and another**<sup>[3]</sup>, the High Court can rectify the errors committed by the tribunal while awarding compensation provided that the total compensation amount shall not exceed the amount of compensation awarded by the tribunal. Taking into consideration the age of the deceased and other attending circumstances, I am inclined to award an amount of Rs.20,000/- towards loss of estate and an amount of Rs.6,000/- towards funeral expenses. The compensation awarded under various heads is as follows:

|                           |          |                       |
|---------------------------|----------|-----------------------|
| <u>Loss of dependancy</u> | <u>:</u> | <u>Rs.3,24,000-00</u> |
| <u>Loss of Estate</u>     | <u>:</u> | <u>Rs. 20,000-00</u>  |
| <u>Funeral expenses</u>   | <u>:</u> | <u>Rs. 6,000-00</u>   |

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Total : Rs.3,50,000-00  
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Thus, the petitioners are entitled for total compensation of Rs.3,50,000/- which is just and reasonable. Accordingly, the point No.2 is answered.

18. In the result, M.A.C.M.A. is allowed in part. The compensation amount is reduced from Rs.3,64,500/- to Rs.3,50,000/-. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

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T.SUNIL CHOWDARY, J

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Date:10-09-2015  
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[\[1\]](#) . 2009 ACJ 1298

[\[2\]](#) (2015)6 Supreme court cases 347

[\[3\]](#) (2011) 14 Supreme Court Cases 639