

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A. No.544 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 order and decree dated 26.10.2004, passed by the Chairman, Motor Accident Claims Tribunal -cum- District Judge, Guntur, in M.V.O.P. No.159 of 2000, awarding compensation of Rs.1,95,000/-.

02. The appellants/ petitioners filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.4,00,000/- on account of the death of Motupalli Anand, who is the husband of first petitioner and the father of the second petitioner, in a motor vehicle accident that occurred on 20.10.1993.

03. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

04. The brief averments made in the petition are that on 20.10.1993 at 4.30 p.m. while the deceased - Motupalli Anand crossing the road from South to North on his bicycle at that time a lorry bearing No. MTG 5877, which was driving in a rash and negligent manner dashed the deceased, due to which he received grievous injuries. Immediately he was shifted to Government Hospital, Vijayawada, where he died on 21.10.1993. On the date of accident, he was aged 35 years, working as fitter in South Central Railway, Vijayawada and getting an amount of Rs.2,000/- towards salary. The claim of the petitioners is that the deceased is the only bread winner in their family, due to his sudden demise,

their dependency was lost. A case in Cr.No.99 of 1993 was registered by the Station House Officer, I town Police Station, Vijayawada, enquired into and filed charge sheet. It is further claim of the petitioners that due to rash and negligent driving of the driver of the lorry, the accident occurred. Therefore, they prayed the court to grant compensation against respondents 1 and 2, who are the owner and insurer of the vehicle.

05. Before the Tribunal, first respondent remained exparte.

06. The second respondent appeared through its counsel and filed counter, denying the material allegations made in the claim petition. The brief averments made in the counter are as follows:

07. The second respondent put the petitioners to prove the manner of accident, age and income of the deceased and specifically pleaded that the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

08. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of contesting respondent, no oral or documentary evidence was adduced.

09. After considering the oral and documentary evidence, the Tribunal held that there is contributory negligence on the part of the lorry driver and the deceased and awarded compensation of Rs.1,95,000/- along with interest at 9% p.a. to the petitioners against both the respondents.

10. Being not satisfied with the compensation awarded by

the Tribunal, the petitioners preferred the present appeal.

11. The learned counsel appearing for the appellants/ petitioners argued that there is no rash and negligent on the part of the deceased, further the Tribunal without any basis held that there was contributory negligence on the part of the deceased also. It is also argued that at the time of the accident, the driver of the lorry was not blown horn and he was driving the lorry rash and negligently and due to which the deceased received injuries and died while undergoing treatment, there is no contributory negligence. It is also argued that the Tribunal ought to have taken the age of the deceased as 35 years and relevant multiplier has to be applied as per the expression of the Apex Court in **Sarla Verma (Smt.) & Others v. Delhi Transport Corporation & Another**^[1]. It is also contended that the Tribunal has not awarded any compensation towards conventional charges.

12. On the other hand, learned counsel for the second respondent contended that the Tribunal after considering oral and documentary evidence rightly awarded compensation and the said finding needs no interference and prayed 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?

POINTS:

14. A perusal of the evidence of P.Ws.1 and 2 clearly shows that P.W.1 is the wife of the deceased and she is not the

eye witness. Whereas P.W.2 is an eye witness and he took the deceased to Government Hospital, Vijayawada, and admitted and also lodged a complaint to the police under Ex.A.1. As per his evidence, lorry driver was coming at high speed in a rash and negligent manner without blowing horn and hit cyclist who was crossing the road. The tribunal after considering the evidence of P.Ws.1 and 2 fairly held that the deceased was passing on national highway at that time the crime vehicle hit the deceased and therefore there is contributory negligence on the part of the deceased. The tribunal also clearly gave finding that the driver of the lorry and the deceased should have taken proper care while moving on the highway. Further the place of accident is prone to fatal accident and when the deceased entered into the track of the lorry, the accident would be occurred. Therefore, the tribunal rightly held that there is contributory negligence on the part of the deceased and also the driver of the lorry. Therefore, in respect of negligence on the part of the lorry driver, the finding of the tribunal needs no interference.

15. Coming to the quantum of compensation, petitioners filed Ex.A.5 service certificate issued by Divisional Manager, South Central Railway, Vijayawada. P.W.3 is the Accounts Assistant. He deposed in his evidence that as per Ex.A.5, by the time of death, he was drawing gross salary of Rs.3,136.40ps.. The tribunal though not taken the net salary of the deceased, taken the gross salary into consideration and deducted 1/3rd amount towards his personal expenses, his contribution towards family comes to Rs.2,000/- per month. The contention of learned counsel for the appellants is that the deceased was aged 35 years at the time of accident. The submission of the learned counsel is against

record. Ex.A.5 clearly shows the date of birth of the deceased as 11.10.1951. Therefore as on the date of his death, he was aged about 42 years. By applying the relevant multiplier, the tribunal awarded Rs.3,60,000/- as compensation along with Rs.15,000/- towards consortium and Rs.15,000/- towards loss of estate. The finding of the tribunal that there is contributory negligence on the part of the deceased and the driver of the lorry and the liability of the deceased is upheld.

16. It is the contention of learned counsel for the appellants that the tribunal has granted meagre amount and not awarded towards conventional charges. It is settled expression of larger Bench of the Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Co. Ltd., & others.**,^[2] wherein the Apex Court awarded Rs.50,000/- as conventional amount to the widow of the deceased and finally prayed the Court to dismiss the petition.

17. Hence, taking into consideration of the submissions made by the learned counsel for the appellants, the petitioners entitled to an amount of Rs.50,000/- towards conventional charges, and in view of contributory negligence, the petitioners entitled to Rs.25,000/- towards conventional charges against the respondents. Thus, the petitioners are entitled Rs.2,20,000/- (rupees two lakhs twenty thousand only).

18. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in **Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service**^[3] and **Rebeka Minz and others v. Divisional Manager, United India**

Limited Insurance Company Limited and another^[4], I am of the view that rate of interest at 7.5% p.a shall be awarded on the enhanced amount from the date of appeal till the date of realisation.

19. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellants/ petitioners from Rs.1,95,000/- to Rs.2,20,000/- (Rupees two lakhs twenty thousand only) along with rate of 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.

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

ANIS, J

Date: 21.09.2015
bv

^[1] (2009) 6 SCC 121

^[2] 2014 ACJ 1430

^[3] 2013 ACJ 2733

^[4] 2012 ACJ 2328