

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.185 of 2013

JUDGMENT:

This appeal is filed by the petitioners-claimants under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 17.10.2012 passed in M.V.O.P.No.160 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Chittoor, wherein and where by an amount of Rs.3,79,145/- was awarded as compensation as against the claim of Rs.6,00,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit.

2. For the sake of convenience, the parties are hereinafter be referred to as they are arrayed in the O.P. before the Tribunal.

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

On 29.03.2010 at about 7.30 p.m. N. Ajaruddin along with Shaik Kalesha was proceeding on a motor cycle bearing No.AP-03-AA-4971 towards his native village. In the meanwhile, the driver of the car bearing No.AP-28-AT-3060 had driven the same in a rash and negligent manner and dashed the motor cycle. The accident occurred due to the rash and negligent driving of the driver of the car bearing No.AP-28-AT-3060. The Station House Officer, Bakaraopet police station registered a case in Crime No.9/2010 against the driver of the car under Section 338 IPC subsequently altered to Section 304-A IPC. Due to the accident, Ajaruddin (herein after referred as 'the deceased') fell down from motor cycle and sustained grievous injuries on various parts of the body and died on 03.04.2010 while under going treatment in CMC Hospital, Veluru. By the time of accident, the deceased was aged about 23 years and used to earn Rs.10,000/- per

month. The petitioners are parents of the deceased. The car bearing No.AP-28-AT-3060 which belongs to the first respondent was insured with the second respondent company at the relevant point of time. Therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation amount of Rs.6,00,000/-.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the material averments made in the petition including the manner of the accident, age and income of the deceased inter alia contending that the accident occurred due to the rash and negligent driving of the rider of the motor cycle and there was no negligence on the part of the driver of the car. The petitioners are not entitled for compensation unless the driver of the car was having valid and effective driving licence at the time of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the motor vehicle accident on 29.03.2010 at 7.30 p.m., arose on account of negligence of driver of the 1st respondent resulting the death of the deceased Nagapatta Ajaruddin?
2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the second respondent, no oral evidence was adduced, but Ex.B1 was marked.

7. On appraising oral and 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 car, which resulted in the death of the deceased.

8. Feeling aggrieved by the judgment and award passed by the Tribunal, the petitioners-claimants preferred the present appeal.

9. The contention of the learned counsel for the petitioners-appellants is three fold:

1. The Tribunal has not applied the correct multiplier while determining the compensation.
2. The finding of the Tribunal that by the time of accident, the deceased was earning Rs.4,000/- per month is contrary to the material available on record.
3. The amount of compensation awarded by the Tribunal is not just and reasonable.

10. Per contra, learned counsel for the second respondent submitted that the petitioners have not produced documentary evidence to establish the avocation and income of the deceased. He further submitted that the Tribunal has awarded just and reasonable compensation. He further submitted that there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal.

11. Basing on the above rival contentions, the point that arises for consideration in this appeal is as follows:

Whether the Tribunal has awarded just and reasonable compensation or not?

12. **POINT**: The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the car bearing No.AP-28-AT-3060, which resulted in the death of the deceased became final in view of non filing of the appeal or cross-objections by respondents 1 and 2. Hence, there is no necessity to discuss that aspect elaborately in this appeal. Therefore, I am fully agreeing with the finding recorded by the Tribunal on issue No.1.

13. As per the recitals in the petition, the deceased was aged about 23 years by the time of accident. In Ex.A2 inquest panchanama and Ex.A3 post-mortem report, the age of the deceased is shown as 23 years. It is an admitted fact that the deceased is an unmarried person. The Tribunal while placing reliance on the principle enunciated in

SARLA VERMA v. DELHI TRANSPORT CORPORATION^[1] has taken the age of the mother of the deceased in order to apply appropriate multiplier. The Tribunal has taken the multiplier as '14'. However, as per the principle enunciated in the case ***MUNNALAL***

JAIN AND ANOTHER v. VIPIN KUMAR SHARMA AND OTHERS^[2]

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 unmarried person. As per Sarla Varma'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 '14'. Basing on the oral testimony of P.Ws.1 and 2, the Tribunal has taken the income of the deceased as Rs.4,000/- per month. The predominant contention of the learned counsel for the petitioner is that the Tribunal has not considered the oral testimony of P.Ws.1 and 2 in right prospective while determining the income of the deceased. I have carefully scanned the testimony of P.Ws.1 and 2. The testimony of P.W.1 and P.W.2 is no way helpful to prove the income and avocation of the deceased. If really the deceased was working as a carpenter in any shop, what prevented the petitioners to examine the owner of the shop or co-employees. It is not uncommon to exaggerate the income of the deceased so as to claim more compensation. Except the self-served testimony of P.W.1, there is no other convincing evidence to prove the avocation and income of the deceased by the time of his

death. Even in the absence of documentary evidence, the Tribunal has taken the income of the deceased as Rs.4,000/- per month. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the Tribunal committed an error while assessing the income of the deceased as Rs.4,000/- per month. If the deceased is an unmarried person, the Tribunal has to deduct 50% of monthly income towards his personal expenses. The deceased may contribute Rs.2,000/- per month(Rs.4,000/- minus Rs.2,000/- = Rs.2,000/-) to the family. Per annum, it comes to Rs.Rs.2,000/- x 12 = Rs.24,000/-. The loss of dependency in this case comes to Rs.24,000/- x 18 = Rs.4,32,000/-. The Tribunal rightly awarded compensation on other heads, which is just and reasonable. The compensation awarded under various heads is as follows:

Loss of dependency	: Rs.4,32,000/-
Loss of Estate	: Rs. 24,000/-
Medical expenses	: Rs. 4,145/-
Transport charges	: Rs. 10,000/-
Funeral expenses	: Rs. 5,000/-
Total amount of compensation	: Rs.4,75,145/-.

14. The petitioner No.1 alone is entitled for enhanced amount of compensation of Rs.96,000/- with interest at 7.5% per annum from the date of petition till the date of realisation.

15. In the result, M.A.C.M.A. is partly allowed enhancing the compensation from Rs.3,79,145/- to 4,75,145/- with interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation of Rs.96,000/-. No costs.

16. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

03rd September 2015
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[\[1\]](#) . 2009 ACJ 1298
[\[2\]](#) (2015)6 Supreme court cases 347