

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A No.235 of 2006

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant, aggrieved by the order, dated 09.09.2005, in O.P. No.281 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District & Sessions Judge, Medak at Sangareddy (for short, 'the Tribunal').

2. Appellant herein is the petitioner and the 1st respondent is the owner and the 2nd respondent is the insurer of crime Lorry bearing No.KA-38-2198 before the Tribunal.

3. Appellant filed the aforesaid O.P. under Section 166 of the Act, claiming compensation of Rs.2,00,000/- for the death of his wife Seri Nagamani (hereinafter referred to, 'as the deceased') in a motor vehicle accident that occurred on 22.03.2004 at about 8:30 P.M. on National Highway No.9, within the limits of Digwal Village. It is alleged that on the date of incident, while the deceased was traveling in an Auto rickshaw bearing registration No.AP-23/V-1088, plying from Zaheerabad to Chelmadakalan Village, the crime lorry came from her opposite direction, driven by its driver in a rash and negligent manner, and dashed against the auto rickshaw, due to which the auto rickshaw fell down, resulting in the instantaneous death of the deceased. Police, Kohir registered a case in Crime No.40 of 2004 for the offence punishable under Section 304-A IPC against the driver of said lorry. At the time of accident, the deceased was aged about 20 years and earning Rs.3,000/- per month by doing agriculture and contributing the same to

the family. Having lost his wife in the accident, he filed the claim petition seeking compensation from the respondents, who are owner and insurer of the said lorry, respectively.

4. Respondents filed counter opposing the claim.

5. On the basis of the pleadings, the Tribunal framed the following issues:

i) Whether the accident occurred due to rash and negligent driving of the driver of the crime vehicle?

ii) What is the just compensation the petitioner is entitled and from whom?

iii) To what relief?

6. During course of trial, on behalf of the appellant, PWs.1 and 2 were examined and Exs.A-1 to A-4 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B.1-policy copy was marked.

7. Upon hearing argument of both the counsel and considering oral and documentary evidence available on record, the Tribunal decreed the petition, in part, awarding compensation of Rs.1,46,000/- with proportionate costs and interest at the rate of 7.5 % per annum from the date of petition till realization, making both the respondents jointly and severally liable to pay the compensation.

8. Being aggrieved by the quantum of compensation awarded by the Tribunal, this Appeal is preferred by the appellant.

9. Heard Mr. C.V. Bhaskar Reddy, learned counsel for the appellant, and Mr. K. Ashok Rama Rao, learned counsel for 2nd respondent-

insurance company. The appeal against Respondent No.1 was dismissed for default *vide* Court order dated 20.04.2016.

10. Considering the contentions of learned counsel for the appellant and perusing the material available on record, the point that arises for consideration in this Appeal is whether the appellant is entitled for enhancement of compensation? If so, to what extent?

11. POINT: Learned counsel for the appellant submits that though the deceased is doing agricultural work and earning Rs.100/- per day, the Tribunal has erroneously taken the income of the deceased only at Rs.30/- per day for the purpose of calculating her annual income; that even according to Minimum Wages Act, the appellant is entitled to get Rs.100/- per day and, therefore, the amount of compensation calculated by the Tribunal is lesser than the amount which the appellant is entitled to, pray to enhance the compensation.

12. The Tribunal has taken the daily income of the deceased at Rs.30/- and arrived at a conclusion that her monthly income was Rs.900/-. It appears that the Tribunal has taken a very low amount towards the minimum wages being earned by an agricultural labourer. Since the deceased is a house-wife aged about 20 years and she is also stated to have been attending agricultural works and earning Rs.3,000/- p.m., the monthly income of the deceased can be taken as Rs.1,500/-, and as such her annual income would come to Rs.18,000/-. If 1/3rd out of Rs.18,000/- is deducted towards her personal expenses, the net annual income of the deceased comes to Rs.12,000/- and if the same is multiplied with the appropriate multiplicand applicable to the age group of the deceased between 15 to 20 years *i.e.*, 18, the amount of compensation to be awarded under the head of loss of dependency

would come to Rs.2,16,000/-. In addition to this, the appellant is entitled to an amount of Rs.20,000/- towards loss of love and affection towards his wife and an amount of Rs.15,000/- towards transportation and funeral expenses, in view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*¹. In all, the appellant is entitled to an amount of Rs.2,51,000/- towards compensation from the respondents. Thus, the appellant is entitled to the compensation more than claimed, in view of the principle laid down by the Apex Court in *Nagappa Vs. Gurudayal Singh*², where the Apex Court opined that since the provisions of the Act have no restriction to award the compensation more than claimed and in appropriate cases, where from the evidence brought on record, the Courts feel that the claimant is entitled to get more compensation than claimed, the Courts may award such compensation but the only embargo is that it should be 'just compensation, but should neither be arbitrary, fanciful nor unjustifiable from the evidence.

13. Accordingly, with the above observation, the Appeal is allowed enhancing the compensation awarded from Rs.1,46,000/- to Rs.2,51,000/-, keeping in tact the rate of interest awarded by the Tribunal as it is. However, the appellant is directed to pay the deficit court fee before the Tribunal within a period of one month from the date of receipt of a copy of this order. Thereafter, the respondents are directed to deposit the entire compensation before the Tribunal within a period of one month. On such deposit, the appellant is permitted to withdraw the entire amount without furnishing any security. Further, the appellant

¹ 2009 (6) SCC 121

² 2003 (2) SCC 274

is not entitled to any interest on Rs.51,000/-, which is the compensation awarded more than claimed.

14. As a sequel, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

JUSTICE G. SHYAM PRASAD

OCTOBER 31, 2016
YVL



THE HON'BLE SRI JUSTICE G.SHYAM PRASAD



M.A.C.M.A No.235 of 2006

Date:31.10.2016

YVL