

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No. 4132 OF 2004

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JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 05.07.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nellore, in O.P.No.591 of 2003, awarding compensation of Rs.5,52,000/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.15,00,000/- on account of the death of one Paluru subbarao (hereinafter referred to as 'the deceased') in a motor vehicle accident occurred on 13.03.2003.

3. The brief averments made in the petition are that on 13.03.2003 at about 5.00 p.m. while the deceased was proceeding on his Kinetic Hero Honda motorcycle to go to Nellore Milk Diary and when he reached near Padugupadu on G.N.T. road, a lorry bearing registration No.AP21/T-1431, owned by the first respondent and insured with the second respondent, came from Kavali side being driven by its driver in a rash and negligent manner without blowing horn and having lost control over the same, dashed the motorcycle of the deceased, due to which the deceased fell down, received grievous injuries and died on the spot.

The deceased was working as Lab Assistant in the Nellore Milk Diary and drawing a salary of Rs.10,250/- per month as on the date of his death. But, due to the sudden demise of the

deceased, the petitioners who are his wife and children, suffered both physical and mental agony and lost their earning source. The police, Kovvur Police Station registered the same as a case in Crime No.39 of 2003 under Section 304-A I.P.C. against the driver of the lorry bearing registration No.AP21/T-1431.

The petitioners pleaded that the accident occurred only due to rash and negligent driving of the driver of the first respondent. Therefore, the respondents 1 and 2, being the insured and insurer, are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent remained *ex parte* before the Tribunal.

5. The brief averments made in the counter filed by the second respondent are as follows:

The respondent put the petitioners to prove the manner of accident, age, income of the deceased and also dependency of the petitioners. The respondent did not specifically admit the driving licence of the driver of the lorry as well as the deceased and also the insurance coverage. The respondent further contended that the insurance company with which the Kinetic Hero Honda motorcycle was insured and the insurer are necessary parties to the present petition and that the petitioners failed to implead them as parties, and therefore, the petition is liable to be dismissed for non-joinder of necessary parties. It is also contended that the claim of the petitioners is high and excessive, and finally prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 to 3 were examined and Exs.A.1 to A.4 got marked. On behalf of the second respondent,

no oral evidence was adduced, but Ex.B.1 copy of insurance policy got marked.

7. After considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.5,52,000/- to the petitioners along with interest at 9% per annum.

8. Not satisfied with the compensation awarded by the Tribunal, the petitioners, who are the legal representatives of the deceased, preferred the present appeal.

9. The learned counsel for the appellants argued that the Tribunal awarded meagre amount of compensation without considering the evidence on record. It is further argued that the deceased used to work as Lab Assistant in Nellore Milk Diary and had drawn Rs.8,271/- as net salary as on the date of his death and in view of the judgment of *Sarla Verma and others Vs. Delhi Transport Corporation and another*^[1], the relevant multiplier for the age group of the deceased is “11”. It is further argued that as the legal heirs of the deceased are more than four in number, 1/4th has to be deducted towards personal expenses. It is further argued that in view of the judgment of the Hon’ble Supreme Court in *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others*^[2], the petitioners are entitled to Rs.50,000/- towards loss of estate, pain and suffering and loss of amenities and also loss of consortium to the first petitioner, and finally prayed the Court to enhance the compensation.

10. The learned counsel for the second respondent-insurance company rightly conceded that in view of the judgment in *Sarla Verma’s case* (1 supra), the relevant multiplier would be “11” for the age group of the deceased who died at the age of 52 years.

11. Having regard to the submissions made by the learned counsel for both the parties, the only point that arises for consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable and whether the appellants are entitled for enhancement of compensation?

12. **Point:**

There is no dispute about the manner of accident in which the deceased died due to rash and negligent driving of the driver of the first respondent. It is also an admitted fact that the second respondent was insurer of the offending vehicle and that the insurance policy was in force at the time of the accident.

13. Further, there is no dispute that the deceased was working as Lab Assistant in Nellore Milk Diary and had drawn Rs.8,271/- towards net salary at the time of accident. It is also not in dispute that the petitioners are the wife and children of the deceased who filed the petition seeking compensation on the ground that after the death of the deceased, they lost their earning source besides suffering mental agony.

14. The salary particulars of the deceased got proved by the evidence of PW3 who produced the salary certificate of the deceased under Ex.A.4, wherein it is clearly mentioned that the gross income of the deceased was Rs.10,250/-, whereas the net salary was Rs.8,271/-. It is also borne out from the record that the petitioners are the wife and children of the deceased and they are more than four in number, as such 1/4th has to be deducted towards personal expenses of the deceased. Therefore, the net contribution of the deceased to the petitioners would be Rs.8,271/-

$X \frac{1}{4} = \text{Rs.}6,203/-$ per month, which comes to $\text{Rs.}74,436/-$ per annum.

15. Further, in view of the judgment in *Sarla Verma's case* (1 supra), the relevant multiplier for the age group of 51 to 55 years is "11". Thus, the compensation towards loss of dependency would work out to $\text{Rs.}8,18,796/-$ ($\text{Rs.}74,436/- \times '11'$) as against $\text{Rs.}5,27,200/-$ awarded by the Tribunal and accordingly it is awarded.

16. A perusal of the record shows that the Tribunal awarded only $\text{Rs.}15,000/-$ towards loss of estate to the petitioners and $\text{Rs.}10,000/-$ towards loss of consortium to the first petitioner. In this regard, the learned counsel for the appellants relied on a judgment reported in *Ramilaben Chinubhai Parmar and others's case* (2 supra), wherein the Larger Bench of the Hon'ble Supreme Court granted $\text{Rs.}50,000/-$ to the appellants therein towards conventional amount. Considering the above aspects, the appellants are entitled for $\text{Rs.}50,000/-$ towards conventional charges.

17. Thus, the total compensation payable to the appellants/claimants comes to $\text{Rs.}8,68,796/-$ ($\text{Rs.}8,18,796/- + \text{Rs.}50,000/-$).

18. Accordingly, the compensation awarded by the Tribunal is enhanced from $\text{Rs.}5,52,000/-$ to $\text{Rs.}8,68,796/-$. 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 Vs. Ahmedabad Municipal Transport Service* ^[3] and *Rebeka Minz and others Vs. Divisional Manager, United India Limited Insurance Company Limited and*

another^[4], I am of the view that an interest at 7.5% per annum shall be awarded on the enhanced amount of Rs.3,16,796/- from the date of appeal till the date of realisation. It is made it clear that the first appellant/first petitioner is exclusively entitled to the conventional amount of Rs.50,000/- along with interest besides her apportioned compensation.

19. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

19.08.2016
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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2014 ACJ 1430

[\[3\]](#) 2013 ACJ 2733

[\[4\]](#) 2012 ACJ 2328