

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A. No.628 of 2005
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JUDGMENT:

The petitioners in M.V.O.P. No.453 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool (for short, 'the Tribunal'), are the appellants herein.

The appellants filed the claim petition seeking a compensation of Rs.6,00,000/- with the allegation that on 22.06.2002, while the husband of petitioner No.1, who was working as a driver, was going in a lorry bearing registration No.KA-04/A-3296 to Bellary with a load of cement and after unloading he was returning to Priya Cement Factory near Peapully driving the lorry, at about 05.45 P.M. while he was crossing the railway level crossing main gate no.12, one train, which was going to Bangalore from Hospet came and hit the lorry. In the said accident, the driver of lorry, who is the husband of petitioner No.1, received grievous injuries and he was then shifted to B.A.M.S. Hospital, Bellary, and he died while taking the treatment.

The owner of lorry as well as the hirer of lorry remained *ex parte* and the case was contested by respondent No.3-Insurance Company.

The Tribunal framed the following issues:

- "1) Whether the accident that occurred on 22-6-2002 at about 5.40 PM. near Railway Crossing Main gate No.12, Bellary, which resulted in the death of the deceased, challa Chinna Sunkanna was during the course of the use of the vehicle bearing No.K.A-04/a-3296 which belongs to the second respondent and hired by the first respondent by the deceased due to non clearing of trees and buses at the Railway gate No.12 near Bellary since the said lorry was hit by the train which was going from Hospet to Bangalore?
- 2) Whether the petitioners are entitled for the claimed amount of Rs.6,00,000/-? If not, how much and against whom?

3) To what relief?"

Before the Tribunal, PWs 1 to 3 were examined and exhibits A1 to A5 were marked. On behalf of respondent No.3, RW1 was examined and Ex.D1 was marked.

The Tribunal, on the basis of oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the lorry by its driver.

With regard to the compensation, the Tribunal took the age of deceased as 35 years, based on the Inquest Report and Post Mortem Report. It also accepted the plea of claimants that the deceased was the driver of vehicle. However, the Tribunal took the annual income at Rs.18,000/- and after deducting 1/3rd thereof, calculated the compensation by applying the multiplier of '16' to the remaining amount of Rs.12,000/-. It arrived at Rs.1,92,000/- towards loss of contribution to the family. Besides the said amount, an amount of Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.500/- towards transportation of the dead body was awarded. Thus, in all an amount of Rs.2,25,000/- was awarded, by award dated 13.12.2004. Seeking enhancement of the said compensation, the present appeal is filed.

Even after service of notice on respondent No.3, none appears for respondent No.3.

The only point that arises for consideration in the present appeal is with regard to just compensation that can be awarded in the facts and circumstances of the case. The accepted age of the deceased was 35 years and he was working as driver. Even in the year 2002 when the accident occurred, the drivers would be getting Rs.3,000/- per month. As per the latest decisions of the Supreme Court, at least 30% enhancement should be given to the

said income in view of the future prospects. Since the deceased was married, his contribution to the family would be 1/3rd of the monthly income. The appropriate multiplier as per the decision of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1] is '15' for the age of 35 years. If the same is applied, the total loss of contribution to the family comes to Rs.4,68,000/-. To the said amount, the loss of consortium of amount of Rs.50,000/- should be granted and the funeral expenses should be enhanced to Rs.10,000/-. The transportation of dead body should be enhanced to Rs.2,000/-. Thus, in all the petitioners-appellants are entitled for Rs.5,30,000/- (Rupees five lakhs and thirty thousand only). The enhanced amount of compensation shall carry interest @ 9% per annum from the date of petition till the date of realisation.

Accordingly, this Appeal is partly allowed enhancing the compensation from Rs.2,25,000/- to Rs.5,30,000/-. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

20.01.2016

MVA

^[1] 2009 (6) SCC 121