

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 4744 OF 2008

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 14.08.2007, passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Mahabubnagar, in O.P.No.684 of 2005, awarding compensation of Rs.1,08,000/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.4,00,000/- on account of the death of one T.Krishnaiah (hereinafter referred to as 'the deceased') in a motor vehicle accident occurred on 02.06.2005.

3. The brief averments made in the petition are that the deceased was unmarried, doing agriculture and milk business and earning Rs.10,000/- at Munnanoor village, Gopalpet Mandal. On 02.06.2005, the deceased along with his relatives went to Maddigatla village to attend a marriage and after marriage, all of them boarded in a tractor/trailer bearing No.AP22V 0467/0468, owned by the first respondent and insured with the second respondent, in order to return to their village. While so, at 4.30 p.m., when the offending tractor reached near Mojerla village, its driver drove it in a

rash and negligent manner and lost control over it , thereby it went off the road near the curve and turned turtle, due to which the deceased Krishnaiah and two others died on the spot. The police, Pedda Mandadi registered the same as a case in Crime No.19 of 2005 and filed charge sheet under Section 304-A IPC against the driver of the offending tractor.

The petitioners stated that they sustained loss of income due to the death of the deceased and prayed the Court to grant compensation.

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 and income of the deceased and also dependency of the petitioners. The respondent denied the allegations made in the petition and also denied that there is a rash and negligent driving on the part of the driver of the offending tractor. The respondent specifically pleaded that the driver of the first respondent did not have any valid driving licence at the time of accident, as such the second respondent is not liable to pay compensation. It is also stated that the accident occurred due to gross negligence of the deceased but not the driver of the tractor. It is further

stated that the deceased was a gratuitous passenger, and finally prayed the Court to dismiss the petition.

6. During the pendency of the petition before the Tribunal, the first petitioner, who is the father of the deceased, died and no legal heirs were brought on record and the second petitioner, who is the wife of the first petitioner and mother of the deceased, is his sole legal representative.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 and 2 were examined and Exs.A.1 to A.7 got marked. On behalf of the second respondent, RW1 was examined and Ex.B.1 got marked.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the tractor and in that accident, the son of the petitioners was died, and awarded compensation of Rs.1,08,000/- along with interest at 7.5% per annum.

9. Not satisfied with the compensation awarded by the Tribunal, the petitioner No.2, who is the sole legal representative of the deceased as well as 1st petitioner, preferred the present appeal.

10. The learned counsel for the appellants argued that the deceased was aged about 20 years and he is the only son of

the petitioners and due to his sudden death, they lost their dependency. It is also argued that the Tribunal granted meagre compensation and prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the second respondent argued that the compensation awarded by the Tribunal is just and reasonable and the findings of the Tribunal need no interference, and prayed the Court to dismiss the petition.

12. 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?

13. **Point:**

A perusal of the record shows that after considering the evidence of PWs 1 and 2, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the tractor/trailer bearing Nos.AP22V 0467/0468 and that finding of the Tribunal needs no interference.

14. The main contention of the learned counsel for the appellants is that the deceased was aged about 20 years and in view of the judgment of *Sarla Verma and others Vs. Delhi*

*Transport Corporation and another*¹, the relevant multiplier is “13”, considering the age of the mother of the deceased. Considering the aforesaid judgment (1 supra), the contention of the learned counsel for the appellants has a force. According to the Tribunal, the deceased was working as a coolie and earning Rs.2,100/- per month and the annual income comes to Rs.25,200/- per month. The Tribunal also deducted 50% of the income towards personal expenses of the deceased and the net loss of dependency comes to Rs.12,600/- per annum. If the said amount of Rs.12,600/- is multiplied with the multiplier “13”, it comes to Rs.1,63,800/- towards loss of dependency.

15. The another contention of the learned counsel for the appellants is that the Tribunal awarded meagre compensation towards loss of estate and funeral expenses. Considering 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 conventional charges.

16. Thus, the total compensation payable to the appellants/claimants comes to Rs.2,13,800/-(Rs.1,63,800/- + Rs.50,000/-).

¹ (2009) 6 SCC 121

² 2014 ACJ 1430

17. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.1,08,000/- to Rs.2,13,800/-. Further, with regard to the direction given by the Tribunal to the second respondent to deposit the compensation and recover the same from the first respondent, the same is hereby unaltered as the Tribunal has rightly gave a finding that the deceased was travelling in a tractor which is not meant for transporting passengers and the status of the deceased is not more than gratuitous under Section 147 of M.V.Act.

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

21.10.2016
Anr

(ANIS, J)



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