

HONOURABLE SMT JUSTICE ANIS

M.A.C.M.A.No 2964 OF 2005

DATED 7TH JANUARY, 2016

BETWEEN

Marripelly Pushpamma and anr

...Appellants

And

Kuthati Ramesh and anr

...Respondents.

HONOURABLE SMT JUSTICE ANIS

M.A.C.M.A.No 2964 OF 2005

JUDGMENT:

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1. This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') aggrieved by the order and decree dated 15.7.2005 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Warangal in MVOP.No. 959 of 2004 .

2. The appellants/petitioners filed the aforesaid Original Petition under Section 166 of the Act claiming compensation of Rs.4.00 lakhs on account of death of Marripally Mallaiah (herein after referred to as 'the deceased') in a motor vehicle accident that occurred on 4.2.2004.

3. For the sake of convenience, the parties hereinafter

will be referred to as they arrayed in the Original Petition.

4. The brief averments made in the petition are that on 4.2.2004 one Mhukya Lachiram engaged the bullock cart of the deceased for transportation of his family members to Agrampahad Jathra. While so, he stopped the bullock cart at APSRTC Zonal College, Hanmakonda to attend the nature calls and when he was returning to bullock cart after attending the nature calls, a auto bearing No. AP 36 V 4332 being driven in rash and negligent manner, hit the deceased, as a result of which, the deceased sustained grievous injuries including head injury. Immediately after the accident, he was shifted to MGM Hospital, Warangal for treatment and while undergoing treatment, he succumbed to injuries on 5.2.2004. The petitioners stated that due to the sudden death of the deceased, they suffered mental agony and lost the bread winner, love and affection. The petitioners further stated that the deceased was earning Rs.5000/- per month from agriculture and also engaging his bullock cart for transportation of goods and passengers and used to contribute the same to his family and that due to sudden death of the deceased, they became destitutes and therefore prayed the Court to grant compensation along with interest against the respondents.

5. Before the Tribunal, though the first respondent appeared through his Advocate, but he did not file counter.

6. The second respondent-Insurance Company filed its counter opposing the claim of the petitioners.

7. The brief averments made in the counter filed by the second respondent are that the auto driver drove the auto bearing No. AP 36 V 4332 in rash and negligent manner with high speed and caused the accident; that the petitioners have to prove the avocation and earnings of the deceased at the time of accident; that the owner of the vehicle failed to report the Insurance Company about the accident and on that ground the Insurance Company is not liable to pay any compensation; that the compensation claimed by the petitionerS is excessive and out of proportion; that the accident occurred when the deceased suddenly crossed the road without observing the vehicles plying on the road and contributed for the accident and that therefore the Insurance Company is not liable to pay compensation.

8. Basing on the above pleadings, the Tribunal framed three issues. To substantiate the claim, the petitioners got examined P.Ws.1 and 2 on their behalf and got marked Exs. A.1 to A10. On behalf of the contest respondents, no evidence either oral or documentary was adduced.

9. 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 auto bearing No. AP 36 V 4332, due to which the deceased died and awarded compensation of Rs.2,08,000/- with interest 7.5% per annum.

10. Being not satisfied by the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

11. The learned Counsel appearing for the

appellants/petitioners argued that the deceased used to earn Rs.5,000/- per month from agriculture and by engaging his bullock cart for transportation of goods and passengers and therefore the Tribunal was erred in taking the monthly income of the deceased at Rs.1500/- per month. Further it is argued that in view of the latest judgment of the Apex Court in ***Ramilaben Chinubhai Parmar and others Vs. National Insurance Company Limited*** (2014 ACJ 1430), the petitioners are entitled to be awarded conventional amount of Rs.50,000/-.

12. The learned Standing Counsel for the second respondent-Insurance Company, on the other hand, submitted that after considering the evidence on record in proper perspective, the Tribunal awarded just and reasonable compensation and that there are no grounds in the present appeal to enhance the compensation any further and prayed the Court to dismiss the appeal.

13. Having regard to the submissions made by the learned Counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellants/petitioners are entitled for enhancement of compensation as prayed for?

14. **POINTS** 1 & 2 : P.W.1, wife of the deceased deposed that the deceased used to earn Rs.5000/- per month

from his agriculture and by engaging on hire his bullock cart for transporting goods and passengers. No doubt there is no evidence to prove the earnings of the deceased and therefore the Tribunal took the income of the deceased at Rs.1500/- per month. However, there is no contra evidence from the side of the respondents to disprove the depositions made by the wife of the deceased that the deceased used to earn Rs.5000/- per month. Considering the evidence on record and taking into consideration the minimum wages as on the date of accident, it is just and reasonable to fix the earnings of the deceased at Rs.2000/- per month or Rs.24000/- per annum. If 1/3rd is deducted towards the personal expenses of the deceased, the annual loss of dependency of the appellants/petitioners comes to Rs.16,000/-. Considering the age of the deceased as on the date of accident, the proper multiplier applicable is '15' and if the same is applied, loss of dependency of the petitioners comes to Rs.2,40,000/-. Added to the same, in view of the latest judgment of the Apex Court in ***Ramilaben Chinubhai Parmar and others Vs. National Insurance Company Limited*** (supra), the appellants/petitioners are entitled to be awarded Rs.50,000/- towards conventional amount. Thus, in total, the appellants/petitioners are entitled total compensation of Rs.2,90,000/-. Therefore the compensation awarded by the Tribunal is enhanced from Rs.2,08,000/- to Rs.2,90,000/-.

15. Accordingly the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.2,08,000/- to Rs.2,90,000/- along with interest at 7.5% per annum on the enhanced amount from the date of petition till the date of

realization.

16. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE ANIS

DATED 7TH JANUARY, 2016.
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