

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3290 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellants/petitioners aggrieved by the Award and decree dated 29.08.2005 in O.P.No.1098 of 2002 passed by the IV Additional Metropolitan Sessions Judge, Hyderabad-cum-XVIII Additional Chief Judge, Hyderabad (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.4,17,500/- was awarded towards compensation with interest at 7.5% per annum, as against the claim of Rs.7,00,000/- made under Section 166 of the Motor Vehicles Act, 1988, for the death of the deceased-Khaja Nazeemuddin in a road accident, seeking enhancement of compensation.

2. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.1098 of 2002 before the Tribunal.

3. The facts, in brief, are that on 12.02.2002 at about 7.15 p.m., while the deceased – Khaja Nazeemuddin was proceeding on his scooter bearing No.AP 9N 4731 from his office at Punjagutta to his residence at Kareemka Nagar via Jubilee Hills, Hyderabad, and when he reached Kareemka Nagar cross roads, a lorry bearing No.AP 28T 5278 driven at a high speed and in a rash and negligent manner, dashed against the scooter of the deceased due to which, he fell down. The driver of the lorry stopped the lorry and ran away. The deceased was immediately shifted to Gandhi Hospital, where he succumbed to injuries on the next day at 6.00 a.m., while undergoing treatment. The S.H.O., Jubilee Hills Police Station, registered a case in Crime No.38/2002 and after due

investigation, they arrested the lorry driver, who is responsible for the accident. The petitioners, being wife, son and mother of the deceased, filed a claim petition in O.P.No.1098 of 2002 before the Tribunal, claiming that the deceased was working as a driver on a car owned by M/s. G.T.M. Exports Limited, Punjagutta, and was drawing a salary of Rs.4,500/- per month and accordingly sought for a sum of Rs.7,00,000/- towards compensation.

4. Before the Tribunal, the 1st respondent – owner of the offending lorry remained exparte, and the 2nd respondent-National Insurance Company Limited, alone contested the claim raising various pleas in its counter. Basing on the pleadings, the Tribunal framed the following three issues:-

- “(1) Whether the accident is due to rash and negligent driving of the driver of the lorry bearing No.AP 28T 5278?
- (2) Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
- (3) To what relief?”

5. During enquiry, the 1st petitioner, who is the wife of the deceased, examined herself as P.W.1, besides examining one Mohd. Ismail, as P.W.2, who is an eye-witness to the incident and Assistant General Manager of G.T.N. Group of Companies, where the deceased said to have been working, and got marked Exs.A.1 to A.6. On behalf of the 2nd respondent-Insurer, none were examined, except marking Ex.B.1 – copy of the insurance policy.

6. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioners, stating that the accident occurred as a result of rash and negligent driving of the lorry by its driver. On Issue No.2, basing on the date of birth recorded as

03.05.1970 in Ex.A.5 – driving licence of the deceased, the Tribunal arrived at the age of the deceased as 32 years as on the date of accident. Concerning determination of compensation, though, the petitioners examined P.W.2 and marked Ex.A.6 – Salary Certificate showing that the deceased was working as a Driver in M/s. G.T.M. Exports Limited, Punjagutta, drawing a salary of Rs.4,500/- per month, still, basing on the evidence adduced by P.W.2 in the cross-examination that the casual labour would be paid for the day he works and that he does not maintain any record for temporary employees and that his company does not possess any record for the particulars mentioned in Ex.A.6, excluded the evidence of P.W.2 together with Ex.A.6. However, while observing that the deceased was having a valid driving licence and badge of a driver as per Ex.A.5, and under the Minimum Wages Act, he would be entitled for an amount of Rs.100/- per day and even if he works for all the 30 days, his income would be more than Rs.3,000/- per month and, after deducting 1/3rd thereof towards personal expenses, arrived the contribution of the deceased to the family at Rs.2,000/- per month or Rs.24,000/- per annum and, by taking the age of the deceased as 32 years and by applying the appropriate multiplier '17' arrived the loss of dependency at Rs.4,08,000/-, with further sums of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate to petitioner Nos.1 to 3, besides Rs.5,000/- towards loss of consortium to petitioner No.1, thus, arrived at a total compensation of Rs.4,17,500/- with interest at 7.5% per annum from the date of petition till the date of realisation with apportionment among the petitioners, by Award and decree dated 29.08.2005.

7. The aforesaid Award is under challenge in the present

Civil Miscellaneous Appeal, on the ground that the Tribunal has granted a meagre sum towards compensation, that the Tribunal was not right in excluding the evidence of P.W.2 and Ex.A.6 salary certificate, that the Tribunal ought to have taken the income of the deceased at Rs.4,500/- per month, instead of Rs.3,000/- per month as per Minimum Wages Act, that the amounts granted towards loss of consortium and loss of estate are on lower side and hence, sought for granting balance amount of Rs.2,82,500/- towards compensation.

8. Heard Sri M. Vijay Reddy, learned counsel for the appellants/petitioners, as well as Smt. S.N. Padmini, learned Standing Counsel for the 2nd respondent-National Insurance Company Limited, and perused the material on record.

9. The claim against 1st respondent – owner of the offending lorry was dismissed for default as per the endorsement dated 06.01.2012 made by the Registry. However, the said dismissal is of any consequence in view of the decision of a Division Bench of this Court in MEKA CHAKRA RAO V. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS^[1], for determining the just and fair compensation.

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration

at the appellate stage."

10. It is to be seen that the finding recorded by the Tribunal in excluding the evidence of P.W.2 is well reasoned. P.W.2 has admitted in the cross-examination that he did not maintain any records and the particulars mentioned in Ex.A.6 were also not contained in the records. Hence, the amount of Rs.3,000/- per month taken by the Tribunal as the income of the deceased is hereby maintained. Concerning the deduction made at 1/3rd towards personal expenses, since the dependants are numbering 4 and in view of the decision of the Hon'ble Supreme Court in SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION AND ANOTHER^[2], a deduction of 1/4th is permissible. Therefore, the contribution to the family is worked out at Rs.2,250/- per month or Rs.27,000/- (Rs.2,250/- x 12) per annum. Further, the Tribunal has taken the multiplier '17' by taking into consideration the age of the deceased as 32 years. In view of the table formulated by the Hon'ble Supreme Court in SARLA VARMA's case (supra), the relevant multiplier is '16', but not '17', as was applied by the Tribunal and, if the right multiplier '16' is applied, the loss of dependency works out to Rs.4,32,000/-. Since the deceased was having occupation and a valid driving licence and also badge, the petitioners are entitled to 50% of loss of dependency towards future prospects, which works out to Rs.2,16,000/-. Further, the petitioners are also entitled for a sum of Rs.50,000/- towards conventional sum in view of the decision of the Hon'ble Supreme Court in RAMILABEN CHINUBHAI PARMAR VS. NATIONAL INSURANCE COMPANY^[3]. Thus, the petitioners are entitled to a total compensation of Rs.6,98,000/-, as against the compensation of Rs.4,17,500/- granted by the Tribunal. The

enhanced amount of Rs.2,80,500/- shall carry interest @ 7.5% per annum in view of the decision of the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others^[4].

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.4,17,500/- to Rs.6,98,000/- (Rupees six lakhs ninety eight thousand only) along with interest at 7.5% per annum on the enhanced amount also from the date of petition till the date of realisation and the same shall be apportioned between the respondents in the same proportion as directed by the Tribunal. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

04.02.2016.

Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3290 of 2005

04.02.2016
Msr

- [\[1\]](#) 2001(1) ALT 495 (D.B.)
- [\[2\]](#) (2009) 6 Supreme Court Cases 121
- [\[3\]](#) LAWS (SC) -2014-4-67
- [\[4\]](#) 2013 ACJ 1403