

HON'BLE MRS. JUSTICE ANIS

M.A.C.M.A.NO.1462 OF 2010

JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short "M.V.Act") aggrieved by the award dated 10-05-2010 passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Guntur in M.V.O.P.No.112 of 1999, awarding compensation of Rs.3,12,500/- to the appellants/petitioners.

2. The above said O.P is filed under Section 163-A of the Act by the petitioners claiming compensation of Rs.3,50,000/- for the death of the deceased-Vemavarapu Immaniyelu in a motor vehicle accident that occurred on 01-12-2008 at 11.40 A.M.

3. The brief averments made in the petition are that on 01-12-2008 when the deceased and others were travelling in an Auto bearing No.AP 7TW 2074 belonging to the 1st respondent and when the said Auto reached near Lam Chapta on Guntur-Amaravathi Road, one RTC Bus bearing No.AP 28Z 1473 came in opposite direction and both the drivers of the vehicles drove at high speed in a rash and negligent manner due to which the accident took place and the deceased died instantaneously. Later, police registered a case in Cr.No.127 of 2008 under Sections 304-A and 337 IPC. 1st respondent is the owner of the RTC Bus and 2nd respondent is the owner of the Auto and 3rd respondent is the insurer and they are jointly and severally liable to pay compensation to the petitioners.

4. 1st respondent filed a written statement denying the material allegations of the petitioners and contended that the RTC is not liable to pay any compensation and prayed for dismissal for the petition. 2nd respondent remained *ex parte*.

5. 3rd respondent filed a written statement denying the material allegations of the petition including manner of accident. The 3rd respondent put the petitioners to prove the manner of accident, age, income of the deceased and also dependency of the petitioners. The 3rd respondent specifically contended that the accident occurred due to negligence of the driver of the bus only and the driver of the Auto was not holding valid and effective driving licence to drive the Auto. Further, the Auto was not having any valid permit and that the Auto has not insured with the 3rd respondent and, therefore, the 3rd respondent is not liable to pay any compensation.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim of the petitioners Pw.1 was examined and marked Exs.A-1 to A-5. On behalf of the respondents, Rw.1 was examined and Exs.B-1 policy copy got marked.

7. After considering the oral and documentary evidence, the Tribunal while granting an amount of Rs.3,12,500/- towards compensation to the petitioners along with interest @ 7.5% per annum from the date of petition till the date of realization, held that the 1st and 2nd respondents are liable to pay compensation @ 50% each.

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

9. The learned counsel for the appellants argued that the Tribunal has not granted full compensation to the petitioners though they are entitled for it and, therefore, prayed to enhance the compensation.

10. Having regard to the submission made by the counsel for the appellants, 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?”

11. POINT:-

There is no dispute about the manner of accident in which the deceased died due to rash and negligent driving of the drivers of both vehicles. The Tribunal after considering the oral evidence apart from documentary evidence rightly held that the accident occurred due to rash and negligent driving of both the drivers. Further, the Tribunal, with regard to income of the deceased, after considering the oral and documentary evidence, rightly held that the net contribution of the family would be Rs.24,000/- per annum and consequently the compensation under the head of “future dependency” comes to Rs.3,60,000/-, and as the claim is made for Rs.3,00,000/-, the Tribunal awarded the said amount of Rs.3,00,000/-. Further, the Tribunal granted an amount of Rs.2,500/- towards loss of estate; and Rs.5000/- towards loss of consortium and Rs.5000/- towards

funeral expenses and thus total compensation comes to Rs.3,12,500/-. With regard to loss of estate is concerned, the learned counsel for the appellants argued that in view of the judgment of Supreme Court in *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others*⁽¹⁾, claimants/petitioners are entitled to Rs.50,000/- towards loss of estate, pain and suffering and loss of amenities and also loss of consortium and prayed to enhance the compensation as prayed for in the claim petition.

12. Therefore, in view of the above settled law enunciated by the Hon'ble Supreme Court, the appellants/petitioners are entitled to an amount of Rs.50,000/- towards loss of estate and loss of consortium. Thus, the total compensation payable to the appellants/petitioners under different heads is as follows:-

1. Future dependency	Rs.3,00,000/-
2. Loss of estate and consortium	Rs. 50,000/-
3. Funeral expenses	Rs. 5,000/-
Total	Rs.3,55,000/-

13. It is pertinent to note that though the appellants are entitled to Rs.3,55,000/-, since the claim made by them is only for Rs.3,50,000/-, it was confined to Rs.3,50,000/-.

Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.3,12,500/- to Rs.3,50,000/- along with interest @ 7.5% per annum from the date of petition to till date of realization.

¹ (2009) 6 SCC 121

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

ANIS, J

02.08.2017
TSNR

