

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA.No.3546 of 2011

JUDGMENT:

This appeal is arising out of the order and decree dated 02.02.2009 in OP.No.663 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District at L.B.Nagar (for short, the Tribunal).

2. Originally, O.P.No.663 of 2006 was filed by the claimant Shaik Mirza @ Shaik Meraj Khan seeking compensation of Rs.5,00,000/- for the injuries sustained by him in the motor vehicle accident that occurred on 26.02.2006. The Tribunal passed the award on 02.02.2009, awarding compensation of Rs.57,500/-. Dissatisfied with the quantum of compensation, the claimant filed the present appeal. During the pendency of appeal, Shaik Mirza @ Shaik Meraj Khan died on 07.10.2009. The appellants, who are the legal heirs of the deceased, were brought on record by order of this Court dated 01.12.2011 in MACMAMP.No.3923 of 2010.

3. The brief facts of the case are that while Shaik Mirza @ Shaik Meraj Khan and others were sleeping aside at the footpath near market gate of Kothapet Fruit Market, Saroornagar, Hyderabad, the driver of car bearing No.APU 7911 drove the vehicle at a high speed in rash and negligent manner proceeding from Dilsukhnagar towards L.B.Nagar on to its extreme left side and came on to the footpath and dashed against the deceased and other persons. Due to that, Shaik Mirza @ Shaik Meraj Khan sustained grievous injuries all over his body. He claimed compensation of Rs.5 lakhs for the injuries sustained by him in the said accident.

4. The first respondent, owner of the crime vehicle, engaged an advocate, but did not file counter. The second respondent, insurance company, filed

counter denying all the averments in the petition including the mode of accident and claim of the petitioner. It is stated in the counter that the claim is highly excessive and exorbitant and sought for dismissal of the petition.

5. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2 and the documents Exs.A.1 to A.10 and Ex.B.1, awarded compensation of Rs.57,500/-. Shaik Mirza @ Shaik Meraj Khan, being dissatisfied with the quantum of compensation, has preferred this appeal for enhancement of compensation. During the pendency of this appeal, he died and his legal heirs were brought on record, as stated supra.

6. Heard the arguments of learned counsel for the appellants Sri K.Jagathpal Reddy, learned counsel for respondent No.1 Sri D.V.Chalapathi Rao and learned counsel for respondent No.2 Sri Katta Laxmi Prasad.

7. The point for consideration in this matter is whether the appellants are entitled for enhancement of compensation?

8. Learned counsel for the appellants submitted that the Tribunal has not considered the medical evidence properly. Though the deceased had suffered 11 fractures, and undergone treatment for 20 days as in-patient in Krishna Institute of Medical Sciences, and had suffered 10% disability, the Tribunal has not awarded adequate compensation. He further submitted that the deceased died during the pendency of the appeal due to the injuries suffered by him in the accident.

9. Originally OP.No.663 of 2006 was filed by the deceased Shaik Mirza @ Shaik Meraj Khan, and during the pendency of the present appeal, he died on 07.10.2009. Thereafter, the legal representatives of the deceased were brought on record, by order of this Court dated 01.12.2011. The date of accident is 26.02.2010, whereas the deceased died on 07.10.2009, during the pendency of

the appeal. The appellants also did not file any application seeking to change the claim from injuries to death in this appeal. Therefore, it appears that there is no evidence on record to show that the deceased died due to the injuries sustained by him in the accident. It is pertinent to note that the cause of action arose during the life time of the deceased. He claimed compensation of Rs.5 lakhs on account of the injuries sustained by him in the accident under various heads. If he was alive, he would have got the compensation. Since he died and his legal representatives were brought on record, the appellants are entitled for the amounts spent on the deceased towards medical expenditure, attendant charges, transportation charges and loss of earnings during the treatment period.

10. In *Oriental Insurance Co. Ltd., Chennai v. P.Govindaswamy*¹, the deceased received injuries in a motor vehicle accident, but his death was not due to injuries. Even then, this Court held that the parents are entitled for compensation for the injuries sustained by the deceased.

11. The ratio laid down in *United India Insurance Company Ltd. v. G.Satish Kumar*² is that any person who is a legal representative either by virtue of succession or through other means, can maintain claim petition. Claimant need not be a dependent on the deceased, and the claim petition by brother of the deceased is also maintainable.

12. The Tribunal awarded only Rs.57,500/- under various heads i.e., Rs.36,000/- towards loss of future income due to permanent disability, Rs.4,000/- towards loss of income, Rs.12,000/- towards medical treatment, extra nutrition and attendant charges, Rs.5,000/- towards pain and suffering and Rs.500/- towards transport charges. It is pertinent to note that the deceased

¹ 2010 (6) ALD 479

² 2012 (3) ALD 226

had received nearly 11 fractures. Though it is contended by the learned counsel for the appellants that the deceased suffered 100% disability, there is no evidence on record to show the same. It is obvious that as the injured himself is no more, it is appropriate to award compensation for the treatment undergone by him. The compensation awarded by the Tribunal is very meager.

13. On consideration of the evidence, the compensation awarded by the Tribunal is enhanced, as shown in the tabular form.

Head	Compensation awarded by the Tribunal	Compensation enhanced
Loss of future income	Rs.36,000/-	Rs.36,000/-
Loss of income	Rs.4,000/-	Rs.21,000/-
Medical expenses, extra nourishment and attendant charges	Rs.12,000/-	Rs.40,000/-
Pain and suffering	Rs.5,000/-	Rs.5,000/-
Transportation charges	Rs.500/-	Rs.5,000/-
Total	Rs.57,500/-	Rs.1,07,000/-

12. In the result, the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.57,500/- to Rs.1,07,000/- with interest at 7.5% per annum from the date of petition till the date of realization. No order as to costs.

13. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

Date:12.04.2017
TJMR

GUDI SEVA SHYAM PRASAD, J.