

THE HON'BLE MR JUSTICE N.BALAYOGI

M.A.C.M.A. No.2164 of 2009

JUDGMENT:

The claimants – appellants aggrieved by the Judgment and Decree dated 3.5.2007 in O.P. No.1522 of 2001 on the file of the I Additional Motor Accidents Claims Tribunal, Nizamabad, preferred this appeal on the ground that the Tribunal ought to have applied multiplier '25' and granted compensation of Rs.5,00,000/-. It is further contended that the Tribunal should have estimated earnings at Rs.15,000/- per month and the amount awarded on different heads is very meager which require modification.

2. On the other hand, respondents contended that the Tribunal ought to have considered multiplier '17', instead of '18' and should have deducted 1/4th towards personal expenses of the deceased.

3. The claim of appellants, in brief, is as follows :

On 21.7.2001, while the deceased was proceeding on cycle and reached near check-post cross roads, SRSP Pochampad, at 6.30 PM, an auto bearing No. AP 25 T 8710 came with high speed in a rash and negligent manner without blowing horn and hit the cycle from behind. As a result, the deceased fell down and the auto ran over him causing crush and multiple injuries and he died on the spot.

4. The deceased was 28 years and was a Project Labourer and used to earn Rs.15,000/- per month and spend the entire amount for the family.

5. The case of respondents is that the deceased was pedaling the cycle in zig zag manner in a rash and negligent manner and dashed the said auto.

6. Before the Tribunal, on behalf of claimants - appellants, P.Ws.1 to 3 were examined and Exs.A1 to A5 were marked. On behalf of respondents, none examined, but Ex.B1 was marked.

7. The main contention of the appellants is that the Tribunal ought to have estimated the monthly earnings of the deceased at Rs.15,000/- per month and awarded full compensation of Rs.5,00,000/-.

8. On the other hand, the respondents' contention is that there is no consistent corroborative evidence with regard to the income of the deceased and the amounts awarded are legal.

9. The first petitioner, who is the wife of the deceased, is examined as P.W.1, besides examining the complainant as P.W.2 and the employer of the deceased as P.W.3. During the cross-examination, P.W.1 admitted that she is not an eyewitness to the accident, but her evidence is relevant to the extent that her husband died in an accident involving the auto bearing No. AP 25 T 8710

10. The evidence of P.W.2 is utmost relevant to decide the manner in which the accident occurred and to prove the negligence. It is the

specific allegation in Ex.A1 - F.I.R. and the finding of the Investigating Officer under Ex.A2 – charge sheet that on that date i.e., on 21.7.2001 at 6.30 PM, when the deceased and P.W.2 were proceeding on separate cycles, the auto bearing No. AP 25 T 8710, driven by its driver, came with high speed in a rash and negligent manner and dashed the deceased.

11. The number of auto is specifically mentioned as ‘AP 25 T 8710’ in Ex.A1 – F.I.R. and the Investigating Officer filed charge sheet against the driver of the auto finding that the accident is due to rash and negligence of the driver of the auto.

12. The Tribunal, having considered the evidence of P.Ws.1 and 2 and the documentary evidence Exs.A1 and A2, rightly came to the conclusion that accident occurred on 21.7.2001 at 6.30 PM. Ex.A1 – F.I.R. was submitted by P.W.2 in the early morning on 22.7.2001. As the place of accident is not near to the Police Station, first the dead body was brought to the house and later it was shifted to the Police Station. Accordingly, the delay was properly explained and there is no scope for fabrication or concoction of F.I.R. Hence, the accident was due to rash and negligence of the driver of the auto bearing No. AP 25 T 8710.

13. With regard to the main contention there is evidence of P.W.1 that her husband succumbed to the injuries sustained in the accident involving auto bearing No. AP 25 T 8710. In Ex.A4 – PME Report the Doctors opined that the cause of death is due to shock and hemorrhage

as a result of grievous head injury. The inquestdars under Ex.A3 inquest report opined that the deceased died due to injuries sustained in the road accident. Accordingly, there is direct nexus between the accident and the death.

14. With regard to relationship and dependency is concerned, there is evidence of P.W.1 wherein she clearly deposed that she is the wife and petitioners 2 to 4 are minor children and petitioner Nos.5 and 6 are the parents and petitioners 7 to 9 are brothers and sister of the deceased and petitioners 2 to 4 and 7 to 9 are minors. The names of 1st petitioner, brother and parents of the deceased were clearly mentioned in Ex.A3 - Inquest Report. There is no rebuttal evidence with regard to the relationship between the deceased and the claimants concerned, hence the Tribunal is right in holding that all the petitioners are dependents on the income of the deceased.

15. Regarding the income, the evidence of P.W.1 is that her husband is a Project Labourer and running iron shop and he used to earn Rs.15,000/- per month, whereas in Ex.A3 – Inquest Report, occupation of the deceased is shown as Labourer. No piece of material is produced before the Tribunal in proof of deceased's iron business.

16. It is also the evidence of P.W.3 and Ex.A5 that the deceased was working as a Labourer under P.W.3. Though P.W.3's evidence is that the deceased was working under him and he used to pay Rs.8,000/- per month, the claimants have not placed any clear proof that the deceased was employed by P.W.3 and paying Rs.8,000/- per month. The

acquittance register, if any, maintained by P.W.3 or any receipt given by the deceased for the salary received was not produced. In such circumstances, the Tribunal, having appreciated the oral and documentary evidence and marshalling the facts, came to the conclusion that since the deceased was alleged to be a skilled labourer, he would earn Rs.100/- per day and assessed the income at Rs.3,000/- per month and Rs.36,000/- per annum.

17. Further, with regard to the age of the deceased, there is no document in proof of the age of the deceased, but, in the claim petition, the age of the deceased was shown as 28 years and under Ex.A3 – Inquest Report and Ex.A4 – PME Report, age of the deceased was shown as 30 years. Accordingly, in the absence of any documentary proof, the Tribunal considered the age of the deceased as 30 years as mentioned in Exs.A3 and A4.

18. As per the decision in *U.P. SRTC v. Trilok Chandra*¹ for crimes under Section 163 of the Motor Vehicles Act, the multiplier applicable for the age group 26 to 30 is '17'. But, the Tribunal applied multiplier '18' as per the second schedule of Section 163-A of Motor Vehicles Act.

19. Further, the Tribunal arrived at Rs.6,48,000/- towards the compensation and deducted 1/3rd towards personal expenses of the deceased himself had he been alive. As per the case of *Sarla Verma v.*

¹ (1996) 4 SCC 362

*DTC*² where the number of dependents exceeds 6, $1/5^{\text{th}}$ has to be deducted towards the personal expenses of the deceased, whereas the Tribunal deducted $1/3^{\text{rd}}$ towards personal expenses, which is erroneous. Having estimated the monthly income of the deceased at Rs.3,000/-, the annual income comes to Rs.36,000/- and after deducting $1/5^{\text{th}}$ towards the expenditure of the deceased himself had he been alive, the loss of dependency should be Rs.28,800/- (36000 – 7,200) and by applying multiplier ‘17’, the compensation comes to Rs.4,89,600/-, which is the loss of dependency to claimants – appellants on account of the death of the deceased.

20. The Tribunal awarded Rs.15,000/- towards loss of consortium to the first petitioner, Rs.1,000/- towards transportation, Rs.2,000/- towards funeral expenses.

21. The 1st petitioner is aged about 25 years and she lost the consortium for a long period, therefore, I feel it is appropriate to award Rs.25,000/- towards loss of consortium, while confirming award of Rs.1,000/- towards transportation and Rs.2,000/- towards funeral expenses. I further award loss of estate at Rs.5,000/-. Thus, the compensation comes to Rs.5,22,600/- (4,89,600 + 25,000 + 1,000 + 2,000 + 5,000). Since the claimants claimed only Rs.5,00,000/- in the appeal, the award is restricted to Rs.5,00,000/-. Consequently, the apportionment of the compensation is also modified awarding

² (2009) 6 SCC 121

Rs.2,50,000/- to the 1st petitioner, Rs.25,000/- each to Respondents 2 to 4 and 7 to 9 and Rs.50,000/- each to petitioners 5 and 6.

22. In the result, the appeal is allowed with costs through out while modifying the impugned judgment and awarding total compensation of Rs.5,00,000/- which is apportioned among the petitioners as follows :

1 st petitioner (wife)	..	Rs.2,50,000/-
2 nd petitioner (son)	..	Rs. 25,000/-
3 rd petitioner (daughter)	..	Rs. 25,000/-
4 th petitioner (son)	..	Rs. 25,000/-
5 th petitioner (father)	..	Rs. 50,000/-
6 th petitioner (mother)	..	Rs. 50,000/-
7 th petitioner (brother)	..	Rs. 25,000/-
8 th petitioner (sister)	..	Rs. 25,000/-
9 th petitioner (brother)	..	Rs. 25,000/-
Total :		<u>Rs.5,00,000</u>

23. Out of the amount awarded to the 1st petitioner, she is entitled to withdraw an amount of Rs.1,00,000/- (Rs.One Lakh only) with proportionate costs and accrued interest. The remaining amount of Rs.1,50,000/- (Rs.One lakh fifty thousand only) shall be kept in F.D. in the State Bank of India, Kanteswar Brach, Nizamabad for a period of 5 years.

24. The amount of Rs.25,000/- (Rs.Twenty Five Thousand only) awarded to the 2nd petitioner, being minor shall be kept in F.D. in State Bank of India, Kanteswar Branch, Nizamabad till he attains majority.

25. The amount of Rs.25,000/- (Rs.Twenty Five Thousand only) awarded to the 3rd petitioner, being minor shall be kept in F.D. in State Bank of India, Kanteswar Branch, Nizamabad till she attains majority.

26. The amount of Rs.25,000/- (Rs.Twenty Five Thousand only) awarded to the 4th petitioner, being minor shall be kept in F.D. in State Bank of India, Kanteswar Branch, Nizamabad till he attains majority.

27. Out of the amount of Rs.50,000/- (Rs.Fifty Thousand Only) awarded to the 5th petitioner, being father of the deceased, is permitted to withdraw an amount of Rs.25,000/- (Rs.Twenty five thousand only) with accrued interest and the balance amount of Rs.25,000/- shall be kept in F.D. in State Bank of India, Kanteswar Branch, Nizamabad, for a period of 5 years.

28. The amount of Rs.50,000/- (Rs.Fifty thousand only) awarded to the 6th petitioner, being mother of the deceased, is permitted to withdraw the entire amount of her share with accrued interest.

29. The amount of Rs.25,000/- (Rs.Twenty five thousand only) awarded to the 7th petitioner, being brother of the deceased, shall be kept in F.D. in State Bank of India, Kanteswar Branch, Nizamabad for a period of 5 years.

30. The amount of Rs.25,000/- (Rs.Twenty five thousand only) awarded to the 8th petitioner, being sister of the deceased, shall be kept in F.D. in State Bank of India, Kanteswar Branch, Nizamabad for a period of 5 years.

31. The amount of Rs.25,000/- (Rs.Twenty five thousand only) awarded to the 9th petitioner, being brother of the deceased, shall be

kept in F.D. in State Bank of India, Kanteswar Branch, Nizamabad for a period of 5 years.

32. The Advocate fee is fixed at Rs.2,500/- (Rs.Two Thousand and Five Hundred Only).

33. Miscellaneous petitions pending, if any, in the appeal shall stand closed.

JUSTICE N.BALAYOGI

August, 2017.

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