

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2099 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellants, who are the petitioners in O.P. No.752 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.4,03,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation granted by the Tribunal, as against Rs.5,00,000/-, vide the order dated 12.07.2006, for the death of one K.Narasimha (deceased) in a motor accident occurred on 06.02.2004. The appellants are the wife, children and parents of the deceased.

2. The facts would show that on 06.02.2004 at 1-00 p.m., the deceased was walking on the national high way No.1, when he reached Prem Rose Hotel at Chintalkunta, Vanasthalipuram, a lorry bearing registration No.ABT 6248 proceeding from Hayathnagar to L.B.Nagar, driven by its driver in a rash and negligent manner at high speed, dashed against the deceased causing instantaneous death. The appellants stated that was aged 35 years, earning Rs.4,500/- per month and contributing the same for the maintenance of the family and due to the said accident, they lost their sole bread earner. Therefore, they laid a claim of

Rs.5,00,000/- against respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle.

3. Respondent No.1-owner of the crime vehicle remained *ex parte* before the Tribunal. Respondent No.2-insurer filed counter denying the averments made in the petition and pleaded that the owner of the crime vehicle did not inform the accident to the insurer, which is in violation of Section 134(c) of the Act.

4. The Tribunal after considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.5 and Ex.B.1, determined compensation as Rs.4,03,000/- and granted the same with interest at the rate of 7.5% per annum from the date of petition till realisation against both the respondents.

5. Heard both the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record. The appeal against respondent No.1-owner is dismissed on 05.07.2016 for default. However, dismissal of the appeal for default against the respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"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

¹ 2001(1) ALT 495 (D.B.)

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."

6. As far as the rashness and negligence on the part of the driver of the crime vehicle, there is no dispute.

7. Learned counsel, appearing on behalf of the appellants, would submit that the Tribunal had not granted compensation on all the heads, more particularly, towards loss of love and affection. He has relied on the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**². Whereas, learned counsel for respondent No.2-insurer contended that there are many instances, where the Hon'ble Supreme Court has granted Rs.15,000/- towards loss of consortium and small amounts for the loss of love and affection and ultimately, prayed to dismiss the appeal.

8. In view of the contentions putforth, the point for determination is, whether the appellants are entitled for enhancement of compensation as contended?

² 2013 ACJ 1403

9. As seen from the record, the Tribunal has granted a total compensation of Rs.4,03,000/-, i.e., Rs.3,84,000/- towards loss of estate, Rs.15,000/- towards loss of consortium, Rs.2,000/- towards transportation to the hospital and Rs.2,000/- towards funeral expenses. In **Rajesh's** case (supra 2), the Hon'ble Supreme Court has granted Rs.1,00,000/- towards loss of consortium to the wife, Rs.1,00,000/- towards loss of care and guidance for minor children and Rs.25,000/- towards funeral expenses. As seen from the record, the deceased in the present case left three children, i.e., appellant Nos.2, 3 and 4, and the same is not in dispute. The accident had occurred in this case on 06.02.2004. The Tribunal has granted Rs.15,000/- towards loss of consortium to the wife-appellant No.1, which is not reasonable. In the circumstances of the case, appellant No.1 can be granted an amount of Rs.50,000/- towards loss of consortium. The Tribunal has granted an amount of Rs.2,000/- towards transportation to the hospital, Rs.2,000/- towards funeral expenses and the said amounts are very meagre which require enhancement. The Tribunal also has not granted any amount on account of loss of love and affection. So, in the facts and circumstances of the case, the appellants are entitled to a sum of Rs.66,000/- towards loss of love and affection, transportation to hospital and funeral expenses. The amount of Rs.3,84,000/- granted by the Tribunal towards loss of estate is maintained.

10. There is no dispute that the driver of the crime vehicle has valid driving licence and the copy of insurance policy is in force

by the date of accident and therefore, both the respondents are jointly and severally liable to pay the compensation determined to the appellants.

11. Thus, the amount of Rs.4,03,000/- granted by the Tribunal as compensation is enhanced to Rs.5,00,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. Amount of compensation enhanced by this Court shall be apportioned among appellant Nos.2 to 4 equally and they are permitted to withdraw their entire shares after attaining the age of majority. Appellant Nos.1, 5 and 6 are also entitled to withdraw their entire share amounts. The other conditions imposed in the impugned order shall remain unchanged.

12. Accordingly, this appeal is allowed modifying the order dated 12.07.2006 passed by the Tribunal, by enhancing the compensation, as indicated above. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 02.02.2017

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