

HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.709 OF 2006

JUDGMENT:

This Motor Accident Civil Miscellaneous Appeal is arising out of the order dated 02.12.2005 in O.P.No.353 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad (for short, "Tribunal").

2. The appellants herein are the legal heirs of deceased Dahagam Vasantha Mahadev, who died in a motor vehicle accident on 13.09.2000. They filed O.P.No.353 of 2001 under Sections 166(1) (c) and 163-A of the Motor Vehicles Act, 1988 (for short, the Act) claiming compensation of Rs.4,00,000/- on account of the death of Dahagam Vasantha Mahadev. The Tribunal has awarded a compensation of Rs.50,000/- as against the claim of the petitioners. Aggrieved by the quantum of compensation, this appeal has been preferred.

3. The brief facts of the case are that on 13.09.2000 at about 5.30 pm, while Dahagam Vasantha Mahadev was returning from Mancheri to Chinnoor in a jeep bearing No.AP1/A-9545 and when the jeep was proceeding towards Chinnoor after crossing Jaipoor Village, another jeep bearing No.AP1/U/0098, being driven by the first respondent, came in the opposite direction in a rash and negligent manner and dashed the jeep of the deceased, as a result of which,

Dahagam Vasantha Mahadev died. Respondents 1, 2, 4 and 5, who are drivers and owners of the jeeps involved in the accident, remained *ex parte* before the Tribunal. The third respondent, National Insurance Company, filed counter denying the rash and negligent driving on the part of the driver of the jeep and attributing negligence to the driver of the jeep in which the deceased traveled. It has also taken pleas with regard to violation of terms and conditions of insurance policy stating that the vehicle in which the deceased traveled was hired and he traveled as an unauthorized passenger. It has also taken the plea of contributory negligence on the part of the drivers of both the vehicles. On these pleas, the third respondent denied its liability. The sixth respondent, United India Insurance Company Limited, is the insurer of the vehicle involved in the accident, filed counter denying its liability, and with several other pleas.

4. The Tribunal, on consideration of the evidence, held that, the accident had occurred due to the rash and negligent driving of both the drivers of the jeeps holding the respective drivers liable. Accordingly, the Tribunal awarded compensation of Rs.50,000/-.

5. The point for consideration in this matter is whether there are sufficient grounds for enhancement of the compensation?

6. Heard the arguments of learned counsel for the appellants Sri Venkateswar Varanasi and learned counsel for the third respondent. The claim against respondents 1 and 2 was dismissed for default, by order of the Court dated 25.04.2016. Respondents 4 to 6 are not necessary parties to this appeal and no claim is made against them. Since they have remained *ex parte* before the Tribunal, their liability is co-extensive along with other respondents.

7. This is an appeal filed by claimants. The claim was for Rs.4 lakhs, whereas the Tribunal awarded an amount of Rs.50,000/- under the head 'no fault liability'. The Tribunal, on the ground that the deceased was drawing pension of Rs.4,100/- per month apart from his other earnings of Rs.3,000/- per month, has refused to grant any compensation other than no fault liability. The Tribunal, however, came to the conclusion that the accident occurred due to the rash and negligent driving of drivers of both the jeeps. The findings of the Tribunal in this regard do not require any interference. Consequently both the insurance companies are liable to pay the compensation to the appellants.

8. Learned counsel for the appellants submits that the appellants filed the OP under Sections 166(1) (c) and 163-A of the Act, but the compensation awarded by the Tribunal under

Section 140 of the Act is meager and not in accordance with law and, therefore, the appellants are entitled for enhancement of compensation.

9. The Tribunal went wrong in awarding compensation under Section 140 of the Act. The OP was filed under Sections 166(1) (c) and 163-A of the Act. The Tribunal ought to have awarded compensation under Section 166 of the Act. The other finding of the Tribunal that the appellants are getting the pension of the deceased and therefore they are not entitled for compensation other than the liability under Section 140 of the Act is not in accordance with law.

10. Therefore, the said finding of the Tribunal is set aside. The appellants are entitled for compensation under Section 166 of the Act. The deceased was 60 years old by the date of accident. His income can be taken into consideration as Rs.3,000/- per month, which comes to Rs.36,000/- per year. After deducting 1/3rd towards his personal expenses, the annual income would be Rs.24,000/- per year. The multiplier for the age of the deceased is '9' as per the ratio laid down by the Hon'ble Supreme Court in **Smt.Sarala Varma v Delhi Transport Corporation**¹. Hence, the compensation comes to Rs.2,16,000/- (Rs.24,000/- X 9). The wife of the deceased is entitled for consortium of Rs.10,000/-. An amount of Rs.10,000/-

¹ 2009(6) SCC 121

is awarded towards funeral expenses. The total compensation the appellants are entitled is Rs.2,36,000/-.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed in part. The compensation awarded by the Tribunal of Rs.50,000/- is enhanced to Rs.2,36,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till realization. Respondents 1 to 3 are directed to deposit the amount within two months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw half of the amount awarded herein and the remaining amount can be withdrawn after expiry of the appeal time.

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

Date: 18.01.2017
TJMR

G.SHYAM PRASAD, J