THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 21 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 ((for short 'the Act) by the appellants-claimants challenging the order and decree dated 20.9.2004 passed in O.P. No.2022 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad.

The brief facts of the case are that the appellants are the parents of the deceased Shaik Ismail. They filed the aforementioned O.P. stating that on 20.1.2001 at about 10.00 a.m., while the deceased along with the appellants, was crossing NH 16 road at Medipally Village, one lorry bearing registration No. AP 5 X 5803 came in a rash and negligent manner and in a high speed and dashed against the deceased. As a result, the deceased sustained multiple grievous injuries all over his body and died instantaneously. A case in Crime No. 5 of 2001 under Section 304-A IPC was registered. According to the appellants, the deceased was ten years old as on the date of the accident. He was hale and healthy and used to do milk business and was earning about Rs.1,500/- per month. He used to contribute his entire earnings to the family. As a result of the unforeseen incident, the appellants lost their sole bread winner. Therefore, the appellants filed the aforementioned O.P. before the Tribunal claiming compensation of Rs.3,00,000/-.

Before the Tribunal, the 1st respondent, owner of the offending vehicle filed his written statement contending that the accident did not occur on account of the rash and negligent driving on the part of the driver of the lorry; the lorry was duly insured with respondent No.2 and the insurance policy was in force at the time of the accident and, therefore, respondent No.2-insurer is alone liable to pay the compensation. He also disputed the age and earnings of the deceased.

While disputing the claim of the appellants, the 2nd respondent-insurance company also filed written statement before the Tribunal denying the averments made in the petition. It also disputed the age, avocation and income of the deceased. It also pleaded that the compensation claimed is excessive and exorbitant.

Based on the above pleadings, the following issues were settled for trial.

1. Whether the accident was due to rash and negligent driving of the driver of lorry bearing No. AP 5 X 5803 ?

2. Whether the petitioners are entitled for compensation. If so, to what extent and from whom?

3. To what relief ?

Before the Tribunal, on behalf of the appellants-claimants, the father of the deceased got himself examined as P.W.1 and got marked Exs. A1 to A4 besides examining one Outla Shankar, who is the eye witness to the incident as P.W.2. Though no oral evidence was let in on behalf of the 2nd respondent-insurance company, however, Ex.B1,insurance policy was marked with consent.

On a perusal of the oral and documentary evidence on record, the Tribunal granted an amount of Rs.70,000/- as compensation as against the total claim of Rs.3,00,000/-. Being dissatisfied with the amount of compensation granted by the Tribunal, the appellants-claimants filed the present appeal.

Heard learned counsel for the appellants and learned counsel for the 2nd respondent-insurance company and perused the record.

Learned counsel appearing for the appellants-claimants, would contend that the learned Tribunal was unjust and unreasonable in granting a very meagre amount of Rs.70,000/- as compensation as against the claim of Rs.3,00,000/-. He would also contend that the learned

Tribunal erred in not awarding any amount towards loss of love and affection to the appellants, who lost their young son. He further contended that The Tribunal also erred in disbelieving the plea of the appellants that the deceased was doing milk business and was earning about Rs.1,500/- per month. Learned counsel further contended that had the deceased been alive, he would have contributed substantially to the family and the learned Tribunal without appreciating this fact, had granted a meagre amount of Rs.70,000/- as compensation. In support of this contention, he relied on the decision of the Supreme Court in Kishan Gopal and another vs. Lala and Others[1] wherein the Supreme Court while dealing with an accident occurred in the year, 1992 where the deceased was a ten year old boy, who is a non-earning member, granted an amount of Rs.5,00,000/- (Rs. 4,50,000/- towards loss of dependency and another sum of Rs. 50,000/- under all conventional heads) as compensation. He, therefore, prayed that the appeal be allowed and the compensation be enhanced.

On the other hand, learned counsel for the 2nd respondent-insurance company contended that since the deceased was ten years old as on the date of the accident, there is no possibility for him to earn any money and the learned Tribunal was justified in granting an amount of Rs.70,000/- as compensation. Learned counsel for the insurance company also relied on the decision of the Delhi High Court in Chetan Malhotra vs. Lala Ram rendered on 13.5.2016 in MAC.App. No. 554 of 2010 and batch, wherein the Delhi High Court while dealing with the death of a case of a ten years old boy, who died in an accident which occurred in the year, 2011, taking into account the inflation prevailing in 2011 and the earnings relating to the year of accident, awarded an amount of Rs.6,68,000/- and odd as compensation and in the case on hand, since the accident occurred in the year 2001, there are no compelling

[1] (2014) 1 Supreme Court Cases 244

circumstances to enhance the compensation and ultimately prayed to dismiss the appeal.

There is no much contest with regards the rash and negligent driving of the crime vehicle, i.e., lorry bearing No. AP 5 X 5803 and the liability of the respondent-insurer. There is ample evidence on record to show that the deceased Shaik Ismail died due to rash and negligent driving of the lorry bearing No. AP 5 X 5803. There is also evidence to establish that the said lorry was insured with the 2nd respondent-insurer under the original of Ex.B1-Insurance Policy. However, there is no evidence to show that the conditions under Ex.B1-insurance policy were violated either by the driver or owner of the crime lorry. Therefore, the Tribunal after analyzing the entire evidence rightly held that respondent Nos. 1 and 2 being the owner and insurer of the above lorry are jointly and severally liable to pay the compensation awarded by the Tribunal. There is no infirmity on this aspect and the order under appeal is liable to be confirmed in so far as this aspect is concerned.

In order to prove the entitlement of the appellants for claiming compensation on account of the death of their deceased-son is concerned, the 1st appellant got himself examined as P.W.1 and through him Exs. A1 to A4 are marked. As per the criminal case record, the deceased was ten years old as on the date of the accident i.e. 20.1.2001. Further, it is the evidence of P.W.1, father of the deceased that the deceased was selling milk and was earning about Rs. 50/- to 60/- per day. There is no evidence to show that the deceased was a student. The Tribunal after analyzing the evidence on record, disbelieved the plea of the appellants in so far as the income and earnings of the deceased is concerned holding that the deceased was ten years old on the date of the accident, there was no possibility for him to earn any money and on that ground, it did not assess the loss of dependency.

Under these circumstances, it is apt to refer to the decision of the Supreme Court in Kishan Gopal's case (supra-1) wherein the Supreme Court observed at the last paragraph (page 246) of the judgment thus:

> "In view of the aforesaid reasons, it would be just and reasonable to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely, the mother who was about 36 years old, at the time of accident, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and Rs.50,000 under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Susamma Thomas, (1994) 2 SCC 176), which is referred to in Lata Wadhwa case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. The said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. The said amount will carry interest @ 9% per annum for the reason that the Insurance Company has been contesting the claim of the appellants from 1992 to 2013 without settling their legitimate claim for nearly about 21 years. If the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified."

Admittedly, in the instant case, the deceased was ten years old as on the date of the accident i.e., 20.1.2001. While applying the principles laid down in the aforesaid judgment of the Supreme Court, the notional income of the deceased can be taken as Rs. 20,000/-. The age of the mother as per the record is 50 years and as per the judgment of the Supreme Court in Sarla Verma v. Delhi Transport Corporation[2], the appropriate multiplier that would be applicable to assess the loss of dependency would be '13' and by applying the said multiplier, the loss of dependency is assessed at Rs.2,60,000/- (Rs. 20,000/- x 13). In addition to this, the appellants are entitled for an amount of Rs. 40,000/- towards loss of

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[2] AIR 2009 SUPREME COURT 3104

estate, funeral expenses, loss of love and affection. In all, the appellants are entitled for a sum of Rs. 3,00,000/- as compensation as against the amount of Rs. 70,000/- awarded by the Tribunal.

So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 9% per annum from the date of petition till realization and the same is reduced to 7.5% per annum as per the decision of the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others[3].

Accordingly, this appeal is allowed modifying the order dated 20.9.2004 passed by the Tribunal, enhancing the compensation from Rs.70,000/- to Rs.3,00,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The amount of compensation shall be apportioned between the appellants-petitioners equally and they are permitted to withdraw the entire amounts and interest. The other terms of the order under appeal shall remain unchanged.

Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

DATE: 4th August, 2017

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[3] 2013 ACJ 1403