

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

M.A.C.M.A.No.1239 OF 2017

ORDER:

This appeal is filed under Section 173 of Motor Vehicles Act, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal-cum-Principal District Judge, Nizamabad (for short 'the Tribunal') in M.V.O.P.No.357 of 2015, dated 21.02.2017.

2. The appellant is the petitioner, who filed the said O.P. claiming compensation on account of the death of Md.Ansar Ahmed in a motor vehicle accident.

3. The brief facts of the case are that, the petitioner is the mother of the deceased Md.Ansar Ahmed. On 07.08.1997 at about 11:45 A.M., while Md.Ansar Ahmed was travelling in an auto bearing No.AP 25T5410 to go to Kisannagar and when the auto reached the road leading to Srirampur Village situated by the side of N.H.7 and while the auto was taking turn towards by-pass road, all of a sudden a lorry bearing No.AP9T5050 was driven by its driver in rash and negligent manner and dashed against the said auto, as a result of which, Md.Ansar Ahmed sustained serious bleeding injuries and died instantaneously. The police registered a case in crime No.73 of 1997 under Section 304-A IPC against the driver of auto. The deceased was aged 20 years and he was a private employee earning Rs.6,000/- per month. On account of his untimely death, the petitioner being the mother lost her dependency besides loss of love and affection and loss of estate.

4. The vehicle was insured with the 2nd respondent and the 1st petitioner is the owner of the vehicle bearing No.AP25T5410 where the deceased was travelling and that the liability of the insurance company was subsisting as on the date of accident, thereby both

respondent Nos.1 and 2 are jointly and severally liable for payment of compensation under various heads.

5. Respondent No.1 filed counter alleging that the driver of the crime auto is having valid driving licence and the insurance was in force as on the date of accident and that the compensation claimed is excessive.

6. Respondent No.2 filed counter denying the material allegations *inter alia* contending that the accident not occurred due to rash and negligent act of the driver of the auto bearing No.AP25T5410 and it was occurred due to negligence of driver of lorry bearing No.AP9T5050, but the owner and insurance company of lorry were not made as parties to the claim petition, thereby the petition is not maintainable for non-joinder of necessary parties. The owner and the insurance company of lorry are equally liable to pay compensation and that the amount of compensation claimed by the petitioner was excessive and prayed for dismissal of the petition.

7. Based on the above pleadings, the following issues were framed for trial:-

1. Whether the accident took place due to rash and negligent driving of auto bearing No.AP25T5410 by its driver causing death of Md.Ansar Ahmed?
2. Whether the petitioners are entitled for compensation. If so, to what extent and from whom?
3. To what relief?

In view of the amendment, issue No.1 is re-casted as follows:

Whether the petitioner received injuries in the motor accident with the auto bearing No.AP25T5410?

8. During enquiry, the petitioner examined herself as P.W.1 and got marked Exs.A1 to A5 and one Sri Dev Rao Pawar was examined as R.W.1 and got marked Exs.B1 and B2.

9. Upon hearing the arguments of both the counsel, the Tribunal assessed the compensation and awarded total compensation of

Rs.4,36,500/- under various heads together with interest at 7.5% per annum from the date of petition till the date of realisation while directing respondent Nos.1 and 2 to deposit the compensation within one month from the date of award and on such deposit, the petitioner is permitted to withdraw Rs.2,36,500/-.

10. Aggrieved by the award passed by the Tribunal, the present appeal was filed under Section 173 of Motor Vehicles Act contending that the income taken by the Tribunal for awarding compensation at Rs.3,000/- per month is incorrect and he was earning Rs.15,000/- per month as private employee and if the compensation was assessed based on income at Rs.15,000/- per month, the petitioner would be entitled to Rs.5,00,000/-. But the Tribunal did not apply the multiplier properly and awarded minimum compensation. It is also contended that the petitioner would be entitled to Rs.50,000/- towards transport charges and Rs.50,000/- towards funeral expenses, but the Tribunal did not assess the compensation properly and prayed to set aside the award and also prayed to award compensation of Rs.5,00,000/- as claimed by the petitioner.

11. During hearing at the stage of admission, learned counsel for the petitioner contends that the assessment of compensation was not in accordance with law and the Tribunal committed an error in fixing the monthly income of the deceased at Rs.3,000/- instead of Rs.15,000/-. Therefore, the assessment of compensation and awarding the same to the petitioner is an error which is apparent on the face of the record and prayed to set aside the award and pass award for the total claim of Rs.5,00,000/-.

12. The Tribunal framed as many as three issues and again issue No.1 was re-casted. However, the Tribunal recorded its specific finding that the accident occurred due to the rash and negligent driving of the

auto and this finding was not challenged by the insurance company. Therefore, this Court while exercising jurisdiction under Section 173 of M.V.Act, cannot disturb the finding regarding negligence attributed to the driver of the auto bearing No.AP25T5410.

13. The only question in this appeal is regarding enhancement of compensation. The deceased was a private employee according to the allegations made in the petition. P.W.1, the mother of the deceased also deposed that her son was a private employee and earning Rs.15,000/- per month. But, she did not produce any iota of evidence in support of her claim that her son was earning Rs.15,000/- being a private employee and did not disclose where her son was working and his nature of work, etc., to believe that her son was engaged in any private employment to accept the income of the deceased at Rs.15,000/-. In the absence of proof of income, the Court has no option except to conclude that the deceased was an unskilled labour basing on the judgment in **Laxmi Devi v. Mohammad Tabbar**¹. Therefore, fixing compensation by taking the income of the deceased at Rs.3,000/- per month and multiplier as per schedule for the age group of 20 years is not an error since the petitioner did not examine any person including employer under whom her son was working or any other document is produced except examining herself as a witness. As self serving statement is not sufficient to accept the contention of the petitioner that her son was engaged in a private employment and earning Rs.15,000/- per month, therefore, the assessment of income at Rs.36,000/- per annum is in accordance with the settled law.

14. The trial Court applied multiplier '17' as per the schedule and multiplied the annual income with that multiplier and arrived at Rs.6,48,000/- but curiously deducted only 1/3rd towards personal

¹ 2008 ACJ 1488

expenses instead of 50% of it in terms of **Sarla Verma & others v. Delhi Transport Corporation and another**², as the deceased was an unmarried son of the petitioner. But this finding was not challenged by the insurance company. Therefore, I cannot disturb the finding recorded by the Tribunal in deducting personal expenses of 1/3rd out of the income. Therefore, the compensation awarded by the Tribunal under the head of loss of dependency at Rs.4,32,000/- is not an illegality since it was not questioned. The Tribunal also awarded Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The petitioner claimed compensation under Section 163-A of M.V.Act. The second schedule of Section 163-A of the Act consists various heads of compensation. The table appended to the said schedule shows Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. Therefore, the Tribunal rightly awarded compensation under various heads and the petitioner does not deserve any relief in this appeal enhancing compensation from Rs.4,36,500/- to Rs.5,00,000/-. Therefore, I find no ground to admit this appeal.

15. Hence, the appeal is dismissed at the stage of admission while confirming the order passed by the Motor Accidents Claims Tribunal-cum-Principal District Judge, Nizamabad in M.V.O.P.No.357 of 2015, dated 21.02.2017. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. SATYANARAYANA MURTHY, J

JUNE 07, 2017

ssp

² (2009)6 SCC 121