

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA No.2157 of 2011

JUDGMENT:

This appeal is arising out of the order dated 24.03.2008 passed in O.P.No.1 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Mahabubnagar District at Gadwal (for short 'the Tribunal').

2. The appellants are the petitioners, who filed the said O.P. under Section 163-A of the Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/- on account of the death of the deceased, Mohd. Moinuddin, in a motor vehicle accident.

3. For the sake of convenience, the parties are referred to as they arrayed before the Tribunal.

4. The brief facts of the case are that, 1st petitioner is the wife and 2nd petitioner is the son of the deceased. On 25.11.2006 at about 8:00 P.M., the deceased stood by the side of N.H.7 road at Rangapur bus stage and in the meanwhile, the vehicle bearing No.AP12/7-8483 came at high speed in a rash and negligent manner from Kurnool side and dashed the deceased, due to which, the deceased sustained fracture injuries and died on the spot. The accident occurred due to the rash and negligent driving of the driver of the offending vehicle and the police registered a case in crime No.113 of 2006, dated 25.11.2006 under Section 304-A I.P.C. The deceased was working as a watchman at P.J.P. camp and earning Rs.6,000/- per month. The petitioners being legal representatives of the deceased have claimed compensation of Rs.4,00,000/- against respondent

No.1-owner of the vehicle and respondent No.2-insurer of the vehicle. Respondent No.1 remained *ex parte*. Respondent No.2 filed counter denying the allegations made in the petition and stating that the deceased himself was negligent and was trying to stop the vehicles by standing on the middle of the road for boarding to go to his village and therefore, the insurer is not liable to pay any compensation. The Tribunal on consideration of the evidence of P.W.1 and the documents Exs.A1 to A7 and Ex.B1 has awarded compensation of Rs.1,25,000/- against respondent Nos.1 and 2 holding them jointly and severally liable for compensation. Aggrieved by the quantum of compensation, the claimants have preferred this appeal.

5. Heard Sri Srinivasarao, learned counsel representing Sri K.Venkatesh Gupta, learned counsel for the appellants. None appeared on behalf of respondent No.2-insurer in spite of service of notice to the Insurance Company. Respondent No.1 is not a necessary party as he remained *ex parte* before the Tribunal, who is the owner of the vehicle.

6. The point for consideration is whether the appellants are entitled to enhancement of compensation?

7. Learned counsel for the appellants-claimants submits that the quantum of compensation awarded by the Tribunal is inadequate and it requires to be enhanced in view of the decision rendered in *Rajesh and others v. Rajbir Singh and others*¹ and sought for award of compensation as per the ration laid down in the said decision.

¹ (2013)9 SCC 54

8. Before adverting to the merits of the case, it is appropriate to refer to the compensation awarded by the Tribunal hereunder in the tabular form:

S.No.	Name of Head	Compensation awarded by the Tribunal
1.	Loss of dependency	Rs.1,10,000/-
2.	Funeral expenses	Rs. 2,000/-
3.	Transportation	Rs. 3,000/-
4.	Loss of consortium	Rs. 5,000/-
5.	Loss of estate	Rs. 5,000/-
	Total	Rs.1,25,000/-

9. The compensation awarded in *Rajesh's* case is the maximum compensation in view of the particular facts and circumstances of that case under various heads. In view of the facts and circumstances of the present case and in the light of the decision of the Hon'ble Supreme Court rendered in *Ramilaben Chinubhai Parmar v. National Insurance Company*², conventional charges of Rs.50,000/- can be awarded in this case for transportation, funeral expenses and loss of consortium, apart from loss of dependency. As far as loss of estate is concerned, the Tribunal has awarded only Rs.5,000/-, which can be enhanced upto Rs.1,00,000/-.

10. In the result, the appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.1,25,000/- to Rs.2,60,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The respondents are directed to deposit the amount within two weeks from

² LAWS (SC) -2014-4-67

the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their share amount as specified by the Tribunal in its order.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDI SEVA SHYAM PRASAD,J

Date : 19.04.2017
ssp

