

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 623 OF 2008

JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 05.12.2007 passed by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Tirupathi, in O.P.No.344 of 2006, awarding compensation of Rs.2,62,400/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.4,50,000/- on account of the death of the deceased V.Chengaiiah in a motor vehicle accident.

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

4. The brief averments made in the petition are as follows:

On 7.03.2006 at about 10.00 p.m., the deceased V.Jangaiah and P.Jayaramaiah were standing on the left side of the road near Kadaluru Bridge on Tada – Sullurupet main road, a lorry bearing No.MP07-G-5824 driven by its driver in a rash and negligent manner dashed against the deceased V.Chengaiiah and P.Jayaramaiah. Due to the said accident, both of them fell down and the wheels of the lorry ran over the deceased and both of them died on the spot.

5. The first respondent is owner of the lorry and the second respondent is the insurer.

The first respondent remained exparte.

6. The brief averments made in the counter filed by the respondent No.2 before the Tribunal are as follows:

The respondent put the petitioners to prove the manner of accident, age and income of the deceased. The respondent specifically stated that the compensation claimed by the petitioners is high and excessive and prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the first petitioner/ widow of the deceased was examined as PW1. PW-2 is an eye witness to the accident and PW-3 was examined to prove the avocation and income of the deceased. Exs.A.1 to A.7 were marked on behalf of the claimants. On behalf of respondent No.2, neither oral nor documentary evidence was adduced.

8. The Tribunal, after considering oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of lorry bearing No.MP-07-G-5824 and awarded compensation of Rs.2,62,400/- along with interest at 7.5% per annum.

9. Not satisfied with the award passed by the Tribunal, the petitioners preferred the present appeal.

10. The learned counsel for the appellants/petitioners argued that claimants are the dependants of the deceased and are not in a position to maintain themselves and due to the sudden death of the deceased, they became destitutes. It is also argued that the Tribunal has not taken proper income of the deceased and in view of the judgment of the Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another*¹, 1/4th of the income has to be deducted, as there are four claimants. It is also argued that in view of the judgment of the Apex court in *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others*², the petitioners are entitled to Rs.50,000/- towards conventional charges and prayed the court to enhance the compensation.

11. On the other hand, learned counsel for the second respondent argued that after considering oral and documentary evidence, the Tribunal has rightly awarded just and reasonable compensation to the petitioners and the said finding of the Tribunal needs no interference and prayed the court to dismiss the appeal.

12. Having regard to the submissions made by both the learned counsel, the points that arise for consideration are:

¹ (2009) 6 SCC 121

² 2014 ACJ 1430

1. Whether the appellants/petitioners are entitled for enhancement of compensation?
2. Whether the compensation awarded by the Tribunal is just and reasonable?

13. **Points:**

A perusal of the evidence on record shows that on 07.03.2006 at about 10.0 p.m. the deceased and P.Jayaramaiah were standing on the left side of the road near Kadaluru Bridge and at that time the driver of the lorry bearing No.MP07-G-5824 drove the vehicle in a rash and negligent manner and dashed against the deceased and P.Jayaramaiah. Due to the said accident, both the persons died. To prove the accident, the petitioners produced PWs 1 and 2 and Exs. A-1 to A-3. A perusal of these documents, it is proved that the accident occurred due to rash and negligent driving of the driver of the lorry. The Tribunal after considering oral and documentary evidence, rightly held that the accident occurred due to the rash and negligent driving of the driver of the lorry and the said finding of the Tribunal needs no interference.

14. Coming to the quantum of compensation, the Tribunal has rightly taken the income of the deceased at Rs.60/- per day and thus the annual income comes to Rs.21,600/- (Rs.60/-X30X12). In the present case, the claimants are four in number and in view of the judgment of the Apex Court in

Sarla Varma (1st supra), 1/4th has to be deducted towards personal expenses of the deceased, which comes to Rs.450/- per month and the same has to be deducted. Thus the annual income of the deceased comes to Rs.16,200/- [21,600- (450x12)] which was rightly multiplied by 16, by the Tribunal. Thus the loss of dependency comes to Rs.2,59,200/- (Rs.16,200/- X 16).

16. In view of the judgment of the Apex Court in *Ramilaben Chinubhai Parmar's case* (2nd supra), the petitioners are entitled for Rs.50,000/- towards loss of consortium, funeral expenses and other conventional charges.

17. Learned counsel for the appellant also argued that the Tribunal has given meagre amount towards funeral expenses and no amount was granted towards transportation and clothing.

18. Considering the same, an amount of Rs.5,000/- is awarded towards transportation and Rs.1,000/- towards clothing. Thus the total amount comes to Rs.3,15,200/- (Rs.2,59,200/- + 50,000/- + 5,000/- + 1,000/-).

19. Therefore, in view of the above discussion, the compensation awarded by the Tribunal is enhanced from Rs.2,62,400/- to Rs.3,15,200/- along with interest @ 7.5% per annum.

20. Accordingly, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

05.01.2017
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Dated: 05.01.2017

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