

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MA.CMA.NO.588 OF 2007

JUDGMENT

Aggrieved by the order and decree dated 30.12.2006 passed by the Motor Accident Claims Tribunal, (VIII Additional District Judge) at Nizamabad in O.P.No.748/2002, the claimants filed the present appeal seeking enhancement of compensation.

Heard both sides and perused the record.

The case of the claimants is that on 16.5.2002 at about 11.30 a.m., the 3rd claimant was driving the scooter bearing No. AP 25 8527 from Armoor towards Balkonda side, and his father Sangem Chinna Poshanna i.e., the deceased, was the pillion rider. When they reached Srirampur village shivar on Hyderabad – Nagpur road, highway No.7, Trax jeep bearing No.AP 25U 1544, driven by its driver in a rash and negligent manner and at high speed, came in opposite direction and on wrong side and dashed their scooter and due to the said accident, his father fell down, and the front wheel of the jeep ran over him. The pillion rider sustained head injury, crush injuries and died on the spot. The scooter was also completely damaged.

Claiming that the accident occurred due to rash and negligent driving of the driver of the jeep and that due to the accident, they lost their breadwinner, the claimants filed claim petition under Section 166(1)(a) of the Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/-.

The owner of the crime vehicle, who was 1st respondent before the Tribunal, remained ex parte. Even before this court, the appeal against him stood dismissed for default.

The insurance company filed counter and denied the manner of accident as alleged by the claimants and their claim and sought for dismissal of the claim petition.

The Tribunal based on material on record, framed the following issues for consideration:

1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.AP 25U 1544 by its driver?
2. Whether the petitioners are entitled for compensation. If so, to what just amount and against whom?
3. To what relief?

In support of their claim, claimants examined P.Ws.1 to 3 and got marked Exs.A-1 A-7. On behalf of the respondents, except marking of Ex.B-1 copy of insurance policy of crime vehicle, no other oral evidence was adduced.

Considering the evidence on record, the Tribunal awarded Rs.1,95,000/- towards pecuniary damages; Rs.15,000/- towards non-pecuniary damages on all other counts and in all, granted a sum of Rs.2,10,000/- with interest at 7.5 per cent from the date of the petition till realization. The Tribunal also passed directions with regard to manner of withdrawal of the said amounts. Not being satisfied the said compensation, the claimants, who are the wife and children of the deceased, filed the present appeal.

The owner of the vehicle remained ex party before the trial court. As per the judgment of the Division Bench of this court in **MEKA CHAKRA RAO v. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS**¹ dismissal of the appeal for default against the owner of the vehicle is of no consequence to decide the quantum of compensation.

The learned counsel for the appellants/claimants submitted that the deceased was a contractor, undertaking civil contract works. He is also an agriculturist, having Acs.7.91/2 of land and he was earning an amount of Rs.2,00,000/- per annum. But the Tribunal has not considered the same and assessed the monthly income of the deceased at Rs.1,875/- and after deducting 1/3rd towards personal expenses, arrived at Rs.1,250/- per month and by applying the multiplier of 13, awarded an amount of Rs.1,95,000/- towards pecuniary damages and Rs.15,000/- towards non-pecuniary damages. The learned counsel contended that the amount granted by the Tribunal is meager. He stated that no amount is awarded under loss of estate, love and affection etc. Therefore, he sought to enhance the compensation, as per the claim petition.

On the other hand, the learned counsel appearing for the 2nd respondent – insurance company contended that as the claimants have not adduced any tangible evidence in support of the income of the deceased, the Tribunal, taking the income of deceased at Rs.75 per day and taking the average of 25 days in a month and by applying the multiplier of 13, as per the age of the deceased, awarded an amount of Rs.1,95,000/- towards pecuniary damages and Rs.15,000/- towards non-pecuniary damages under all the counts. Further

¹ 2001(1) ALT 495 (DB)

contended that the Tribunal has rightly taken into consideration all the facts and circumstances and awarded just and reasonable amounts and the same warrants no interference and ultimately prayed to dismiss the appeal.

In view of the above rival contentions, the point that arises for consideration is – Whether the claimants are entitled for enhancement of compensation as prayed for?

The Tribunal based on evidence, recorded finding of fact that the accident took place due to rash and negligent driving of the tax jeep bearing No.AP 25U 1544 by its driver and the deceased died in the accident. The respondent – insurance company has not disputed the finding of fact recorded by the Tribunal in this regard and there is also no dispute with regard to the validity of the insurance covering the tax jeep and violation of policy conditions. The dispute is only with regard to quantum.

P.W.1 is the wife of the deceased. She deposed that her husband was a contractor and agriculturist and was earning an amount of Rs.15,000/- per month. To prove the income, the claimants examined the Sarpanch as P.W.3. He stated in his sworn statement filed for chief-examination, that deceased was earning an amount of Rs.2,00,000/- per month by doing contract works and by raising commercial crops. Except the oral evidence, claimants have not produced any records like pahanies to show that the deceased was having lands. The claimants also sought to produce Ex.A-7 income certificate issued by Panchayat Secretary. The Tribunal found that he is not competent to issue income certificate. The Tribunal taking the income of the deceased at Rs.75 per day and

on an average of 25 days in a month, fixed his income at Rs.1,875/- per month and after deducing 1/3rd towards personal expenses, arrived at Rs.1,250/- per month and Rs.15,000/- per annum.

In my considered view, having regard to the facts and circumstances, the amount of Rs.15,000/- per annum assessed by the Tribunal, is meager and requires enhancement. There is no dispute that the deceased was aged 48 years and an earning member. In the circumstances, the loss of earnings can safely be taken at Rs.25,000/- per annum.

The deceased is 48 years. As per the decision of the apex court in **SMT. SARLA VARMA vs. DELHI TRANSPORT CORPORATION**², the multiplier applicable to the age of the deceased is 13. So the loss of earnings caused to the claimants would come to Rs.3,25,000/- (Rs.25,000/- x 13). 1/3rd is deducted towards personal earnings of deceased. So claimants are entitled for Rs.2,16,500/- towards loss of earnings.

Having regard to the facts and circumstances, the amount granted by the Tribunal under non-pecuniary damages is also enhanced from Rs.15,000/- to Rs.35,000/-.

The Tribunal did not grant any amount towards loss of estate and love and affection caused to the claimants. Under this head, the claimants are granted an amount of Rs.40,000/-.

² (2009)6 SCC 121

In all the claimants are granted an amount of Rs.2,91,500/- (Rs.2,16,500/- + Rs.35,000/- + Rs.40,000/-) with interest at the rate of 7.5 per cent per annum from the date of the petition till realization. All the claimants are entitled for equal share in the enhanced compensation. On deposit, the appellants / claimants are permitted to withdraw entire amount. Other conditions imposed by the Tribunal remain in force.

The appeal is accordingly allowed in part. No costs.

Miscellaneous petitions pending if any, shall stand closed.

DR.SHAMEEM AKTHER,J

DATE:27—06—2017

AVS

