

THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.CMA.No.1441 OF 2007

JUDGMENT:

The petitioners in M.V.O.P.No.39 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal - cum - VII Additional District Judge, Madanapalle, have come up with the present appeal with the main grievance that the compensation amount of Rs.1,56,000/- awarded to them by the Tribunal vide order, dated 14.03.2007, passed in the said M.V.O.P., is not just and reasonable.

2. The appellants - petitioners are the parents of one Navatha, who died in a motor accident that took place on 06.10.2004 at about 04:30 PM, while she was proceeding on a bicycle towards Bunglow Bhavi, Punganur Town from her house to attend tuition. The accident occurred due to hit of the bicycle driven by the deceased by a lorry bearing registration No.AP-02-T-1359, which belonged to respondent No.1 herein.

3. Before the Tribunal, the appellants contention was that when the lorry belonging to respondent No.1 hit the bicycle of the deceased, she fell down and sustained multiple grievous injuries and immediately after occurrence of above mentioned accident, she was taken to Government Hospital, Punganur, by the lorry driver and from there she was taken to S.V.R.R. Hospital at Tirupati, where she succumbed to the injuries on 09.10.2004 at about 06:00 PM. Their

further contention was that since the above mentioned accident took place purely on account of the rash and negligent driving of the driver of the lorry bearing No.AP-02-T-1359, respondent No.1, being the owner of the said lorry, to be held liable vicariously for the negligent act of his driver and that the, respondent No.2, with whom the offending lorry was insured, also was to be held liable jointly and severally to pay compensation to them. These were the assertions made by the appellants in their claim statement.

4. The case was not contested by respondent No.1 before the Tribunal.

5. Respondent No.2 alone contested the case. Respondent No.2 disputed the age and occupation of the deceased. It was contended by respondent No.2 that the deceased was 10 years old by the date of alleged accident, as per their information. It was also contended by respondent No.2 that the claim laid by the appellants is highly excessive and exorbitant.

6. The Tribunal, on appreciation of the oral and documentary evidence available in the case record, came to the conclusion that the accident, which ultimately resulted in the death of the deceased, occurred only on account of the rash and negligent driving of the offending lorry, which belonged to respondent No.1, and accordingly, fastened the liability of payment of compensation of

Rs.1,56,000/- as against the owner and insurer of the offending lorry, who were arrayed as respondents in the O.P.

7. The appellants having felt that the amount of Rs.1,56,000/- awarded to them towards compensation was not adequate and reasonable, thus, came before this Court with the present appeal.

8. The appellants' contention was that the Tribunal had not followed the principles of law, which were laid down by several other Courts, while awarding compensation. Since the accident occurred due to the negligent driving by the driver of the lorry belonging to respondent No.1, which was insured with respondent No.2, the Tribunal ought to have awarded the entire compensation of Rs.3,00,000/- as claimed by the appellants. The deceased was aged about 15 years by the date of accident and was a meritorious student and the Tribunal failed to notice that the appellants lost their beloved daughter, who was having better future. It was also the contention of the appellants that though they cited a case law, where compensation amount was enhanced to Rs.2,25,000/- from Rs.90,000/-, taking into consideration the income of the deceased therein at Rs.15,000/- per annum and applying multiplier '15', the Tribunal had simply ignored the principle of law laid down in the said case cited by them, without assigning any valid reasons. Since, no adequate or reasonable compensation was awarded to them by

the Tribunal, they approached this Court with a request to enhance the compensation to Rs.3,00,000/-, as claimed by them.

9. Respondent No.2 – New India Assurance Company Limited alone has contested this appeal. Appeal is dismissed for default as against respondent No.1 - owner of the offending lorry, who does not choose to enter appearance even after service of summons on him, vide order, dated 08.07.2016.

10. It is contended by the learned Standing Counsel appearing for the respondent No.2 that the appellants have not produced any document in proof of their contention that the deceased was a meritorious student. Neither the marks list of the deceased nor any certificate of merit is produced by the appellants to establish the academic excellence of the deceased. The Tribunal taking note of the aforementioned aspect and other relevant evidence available in the case record, has awarded compensation of Rs.1,56,000/- and the compensation so awarded is just and reasonable.

11. Heard the submissions of learned counsels of both sides.

12. Perused the oral and documentary evidence available in the case record.

13. After hearing the submissions of learned counsels appearing for both sides, it is understood that the only dispute raised in the present case is regarding the quantum of compensation.

The negligence attributed to the lorry driver is neither denied nor any evidence is adduced disproving the contention raised by the appellants attributing negligence to the lorry driver. The appellants examined one P. Krishnappa, who was the eye-witness for the accident, and produced Exs.A1 to A5, to establish that due to the negligent driving of the offending lorry by its driver, the lorry hit the cycle of the deceased from its back, and thus, the accident in question took place. No dispute, as such, was raised regarding ownership of the offending lorry and the material available in the case record clinchingly establishes the fact that respondent No.1 is the owner of the offending lorry and as on the date of alleged accident, the insurance policy obtained by respondent No.1 in respect of the offending lorry from respondent No.2 was in force. Since the offending lorry was having valid insurance policy as on the date of accident with respondent No.2, the Tribunal had rightly fastened liability of payment of compensation as against respondent Nos.1 and 2, who were the owner and insurer of the offending lorry, respectively, by making them liable to pay the compensation amount jointly and severally to the appellants.

14. The Transfer Certificate issued by the school, where the deceased studied X class at the relevant point of time discloses that she was a student of X class as on the date of accident. The Tribunal assessed the income of the deceased notionally at Rs.12,000/- per annum, though, it is clearly laid down in the case law cited by the

appellants before the Tribunal that the income at Rs.15,000/- per annum can be taken into consideration for assessing the loss of dependency in respect of death of a non-earning member. If the income of the deceased is taken at Rs.15,000/- per annum, by deducting Rs.5,000/- per annum thereof towards the personal living expenditure of the deceased, the contribution of the deceased to her family comes to Rs.10,000/- per annum. If the same is multiplied by multiplier '15', the loss of contribution of income of the deceased to her family comes to Rs.1,50,000/-. It is not in dispute that the appellants have lost their beloved daughter and the Tribunal has awarded only a sum of Rs.15,000/- towards loss of love and affection. The same, according to me, can be enhanced to Rs.40,000/- and accordingly, the same is enhanced. The Tribunal has awarded only a sum of Rs.15,000/- towards loss of estate. The same is enhanced to Rs.25,000/-. The amount of Rs.3,000/- awarded towards funeral expenses also can be enhanced to Rs.5,000/- and accordingly, the same is enhanced. An amount of Rs.3,000/- is awarded towards transportation and it also can be enhanced to Rs.5,000/- and accordingly, the same is enhanced. The appellants are, thus, entitled to a total compensation of Rs.2,25,000/-.

15. In the result, the appeal is partly allowed enhancing the compensation from Rs.1,56,000/- to Rs.2,25,000/-. The enhanced compensation amount is payable by the owner and insurer of the offending lorry bearing No.AP-02-T-1359, who are respondent Nos.1

and 2, respectively. The Tribunal has awarded interest at 7.5% per annum on the compensation amount awarded by it. The same is maintained on the enhanced compensation amount also and the same is payable to the appellants by respondent Nos.1 and 2, who are held liable to pay the compensation amount jointly and severally.

16. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

October 05, 2017.
MD



J. UMA DEVI, J

THE HON'BLE MS. JUSTICE J. UMA DEVI



M.A.CMA.No.1441 OF 2007

October 05, 2017

MD