

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2543 OF 2006

JUDGMENT:

1. This Appeal is preferred against the order, dated 25.04.2006, in M.V.O.P. No.823 of 2004 on the file the Chairperson, Motor Accidents Claims Tribunal-cum-Special Judge for trial of cases under S.Cs. and S.T.s (POA) Act, 1989-cum-I Additional District Judge, Kurnool (for short, 'the Tribunal'), wherein the Tribunal awarded a compensation of Rs.8,91,648/- against the original claim of Rs.17,50,000/-.

2. Appellants herein are the claim petitioners, 1st respondent herein is the owner and 2nd respondent herein is the insurer of the Auto bearing No.AP.02.T.9552 (for short, 'the crime vehicle'), who filed a petition before the Tribunal, under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, claiming compensation of Rs.17,50,000/- on account of the death of M. Ranganna (hereinafter referred to as 'the deceased'), who happened to be the husband of 1st appellant and father of 2nd and 3rd appellants, in a motor vehicle accident occurred on 14.11.2004.

3. The brief facts of the petition are that, on 14.11.2004, at about 11:30 a.m., while the deceased and his wife were going to Peapully from Pendekallu by motorcycle bearing No.AP.21-F-2210, to distribute wedding cards of the marriage of their son, and when they reached near Yerraguntlapalli cross road, the crime vehicle came in their opposite direction, at high speed, in a rash and negligent manner, and dashed against the motorcycle. As a result of which, the deceased, who was driving the motorcycle, received severe head injuries and died on the spot. At the time of the accident, the deceased was aged about 50 years, hale

and healthy and working as Junior Veterinary Officer at Holagunda Village, Alur Taluq drawing around Rs.13,000/- p.m. and contributing the same to the appellants. Due to the untimely death of the deceased, the appellants lost the love and affection and suffered mental trauma. Hence, filed the petition seeking compensation of Rs.17,50,000/- against the respondents.

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2, insurer of the crime vehicle, filed counter denying the claim of the appellants and contended that the age, avocation and monthly income of the deceased be put to strict proof and as such there is no negligence on the part of the driver of crime vehicle but the deceased alone drove his motorcycle in a rash and negligent manner and caused the accident and contended that the petition is bad for non-joinder of owner and insurer of the motorcycle and finally contended that the compensation claimed by the appellants is highly excessive, exorbitant and prayed for dismissal of the petition.

6. The Tribunal, after framing the issues and, on consideration of the pleadings and evidence of the witnesses P.Ws.1 and 2 and the documents Exs.A-1 to A-6 and Ex.B-1, granted compensation of Rs.8,91,648/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making respondents 1 and 2 jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellants preferred this Appeal seeking enhancement of the compensation.

8. Heard the arguments of Mr. A. Jayasankara Reddy, learned counsel for the appellants, and Mrs. S.A.V. Ratnam, learned standing counsel for the 2nd respondent-insurer.

9. None entered appearance on behalf of the 1st respondent-owner of the crime vehicle and as such there is no representation on his behalf. However, absence of 1st respondent-owner of the crime vehicle is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench of this Court in **Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held as follows:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

10. Learned counsel for the appellants submits that the Tribunal has taken the salary of the deceased as Rs.9,996/- p.m. only and further failed to award any amount towards future prospects or hike in income even though the deceased is a Government servant and working as Junior Veterinary Officer by the date of accident and death. Ex.A-5 is the salary certificate of the deceased; wherein his gross monthly income is shown as

¹ 2001(1) ALT 495 (D.B.)

Rs.12,846/- and net salary as Rs.9,996/-. The Tribunal further failed to award any compensation towards loss of love and affection but, however, granted an amount of Rs.2,000/- towards funeral expenses and Rs.10,000/- towards loss of consortium to the 1st appellant, which is a pittance. Learned counsel for the appellants further submits that the compensation claimed by the appellants is genuine and reasonable and prayed for enhancement.

11. On the other hand, learned standing counsel for the 2nd respondent-insurance company contended that the Tribunal has analyzed the entire evidence on record and awarded just and reasonable compensation, which needs no interference, and ultimately prayed to dismiss the Appeal.

12. In view of the submissions put forth by the learned counsel on either side, the sole point came up for determination is:

Whether the appellants are entitled for enhancement of compensation?

13. **POINT:** Admittedly P.W.1, who is none other than wife of the deceased and eye witness to the accident and was a pillion rider, deposed in her evidence about the manner and occurrence of accident and the death of the deceased i.e., only due to the rash and negligent driving of the driver of crime vehicle, but not due to the rashness and negligence on behalf of the deceased in driving the motorcycle. Though she was subjected to lengthy cross-examination, nothing was elicited to discard her testimony. Ex.A-1 is the certified copy of F.I.R.; Ex.A-2 is the certified copy of charge sheet and Ex.A-3 is the certified copy of inquest report. All these documents reveal that there was rashness and negligence on the part of the driver of crime vehicle. As per Ex.A-4, certified copy of post-

mortem report, the deceased had died due to the multiple injuries, which are possible in a motor accident. There is nothing to disbelieve the evidence of P.W.1 and the documents Ex.A-1 to A-4 marked and as such it can be safely concluded that the deceased died due to the rash and negligent driving of the driver of crime vehicle i.e., Auto bearing No.AP.02.T.9552.

14. There is specific evidence of P.W.1 that her husband was hale and healthy, aged about 50 years, working as Junior Veterinary Officer by the date of accident, drawing a gross monthly salary of Rs.12,846/- and was having eight years of service. He was the only breadwinner of their family. Subsequently, the appellants got examined P.W.2, Dr. P. Ramesh, who deposed that he was working as Veterinary Assistant Surgeon at Holagonda village and the deceased was working as Junior Veterinary Officer under him, at the time of accident; deceased was drawing a gross salary of Rs.12,846/- p.m.. He further deposed that had the deceased been alive, he would have drawn a salary of Rs.15,000/- p.m. Ex.A-5 is the salary certificate, which reveals that the deceased was drawing a net salary of Rs.9,996/-, after deduction of Rs.2,850/-. There is no necessity for P.W.2 to depose falsely before the Tribunal. Ex.A-6 is the secondary school certificate, which reveals the date of birth of the deceased as 04.09.1954. The occurrence of date of accident is on 14.11.2004. So, under these circumstances, it can safely be concluded that the deceased is working as Junior Veterinary Officer, drawing a net salary of Rs.9,996/- and was over and above 50 years. As seen from the evidence and the discussion made in the impugned order, the Tribunal has rightly taken the multiplier '11' applicable to the age group of 51 to 55 years, as per the principle laid down by the Apex Court in **Smt. Sarla Verma and others**

Vs. Delhi Transport Corporation and another². The Tribunal took the monthly income of the deceased as Rs.6,664/-, after deducting 1/3rd from Rs.9,996/- towards his personal and living expenses as his family members are 3 in number, and assessed the compensation under the head loss of dependency as Rs.8,79,648/-. Further, the Tribunal failed to award any compensation under the heads of loss of love and affection, future prospects and only granted an amount of Rs.2,000/- towards funeral expenses, and Rs.10,000/- towards consortium to the 1st appellant, which is a pittance.

15. Learned counsel for the appellants relying on the decisions of the Apex Court in ***Sarla Verma***² and ***Rajesh and others Vs. Rajbir Singh and others***³ submits that the appellants are entitled for enhancement of compensation as determined in the above decisions. In ***Rajesh***³, it was held as follows in Paragraphs 11 and 12:

“11. Since, the Court in ***Santosh Devi's case*** (supra) actually intended to follow the principle in the case of salaried persons as laid in ***Sarla Verma's case*** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In ***Sarla Verma's case*** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and

² AIR 2009 SC 3104

³ 2013 ACJ 1403

equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”

16. In view of the facts and circumstances and the principle laid down by the Apex Court in **Rajesh³**, determination of compensation payable to the appellants is calculated as mentioned hereunder: the monthly gross salary of the deceased is Rs.12,846/-. If 15% of gross salary of the deceased is added towards future prospects, then the monthly salary of the deceased would come to Rs.14,772.90. If 1/3rd is deducted from Rs.14,772.90, the contribution of the deceased to his family members would come to Rs.9,848.60 p.m.; if Rs.9,848.60 is multiplied with 12, the annual contribution of the deceased to his family members would come to Rs.1,18,183.20; if Rs.1,18,183.20 is multiplied with the relevant multiplier ‘11’, the amount of compensation to be awarded under the head of loss of dependency and future prospects would come to Rs.13,00,015/-. In view of the principles laid down by the Apex Court in the above decisions, 5% of Rs.13,00,015/- is deducted towards income tax, it would come to Rs.12,35,014/-, which is the compensation awarded to the appellants under the head of loss of dependency.

17. In the facts and circumstances of this case, as the accident in the case occurred in the year 2004, taking into consideration the cost of living etc., the appellants are entitled for the following compensation on other scores: appellants 2 and 3 being children of the deceased are entitled for a sum of Rs.50,000/- towards loss of love and affection. The 1st appellant, being wife of the deceased, is entitled for Rs.50,000/- towards loss of consortium and all the appellants are entitled for a sum of Rs.25,000/- towards funeral expenses. In all, the appellants are entitled for a compensation of Rs.13,60,014/-.

18. As seen from the evidence on record, the crime vehicle was validly insured with the 2nd respondent and as such there were no violations in the terms and conditions of the policy under Ex.B-1. Hence, both the respondents are jointly and severally liable to pay the compensation.

19. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of dependency	Rs.8,79,648/-	Rs.12,35,014/-
02.	Consortium	Rs.10,000/-	Rs.50,000/-
03.	Loss of love and affection	---	Rs.50,000/-
04.	Funeral expenses	Rs.2,000/-	Rs.25,000/-
TOTAL		Rs.8,91,648/-	Rs.13,60,014/- (Rounded off to Rs.13,60,000/-)

20. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.8,91,648/- to Rs.13,60,000/-, keeping intact the rate of interest of 7.5% p.a. awarded by the Tribunal as it is. Out of Rs.13,60,000/- awarded by this Court, 1st appellant is entitled to an amount of Rs.7,60,000/- and appellants 2 and 3 are entitled to an amount of Rs.3,00,000/- each. Respondents 1 and 2 are jointly and severally liable to pay the compensation. After depositing the compensation amount, the appellants are permitted to withdraw their respective share of compensation amount. The other conditions in the impugned order remain unaltered.

21. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 17.02.2017.
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