

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1009 OF 2005

ORDER:

The order, dated 10-12-2004, passed by the Chairman, Motor Accident Claims Tribunal-cum- III Additional District Judge, Guntur (for brevity 'the Tribunal'), in O.P.No.925 of 2000 is assailed by the claimants in the above mentioned O.P. with the main contention that the compensation amount of Rs.1,39,000/- awarded by the Tribunal is not fair and reasonable.

2. The case of the appellants/claimants is briefly stated as follows:

That on the intervening night of 16/17-08-2000 at about 1.00 A.M., while Mukkala Gurava Reddy (hereinafter referred to as 'the deceased') and others were traveling in a car bearing No. AP 27A-9599 from Guntur to Chirala, when the said car reached near Budampadu Godowns on GBC road, it was hit by its driver to a lorry bearing No. ADJ 5690, which was stationed on the middle of the road without taking necessary precautions, as a result of which, the deceased and others sustained severe injuries and the deceased was shifted to Government General Hospital, Guntur, and there he died due to injuries sustained by him.

3. The appellants/claimants laid a claim as against the owner and the insurer of the car bearing No. AP 27A-9599 and the lorry bearing No. ADJ 5690.

4. The claim of the appellants/claimants was resisted by the owner and insurer of the car bearing No. AP 27A-9599. The owner of the lorry remained ex-parte. The insurer of the lorry bearing No. ADJ 5690 had contested the case.

5. The Tribunal on appreciation of oral testimony of P.W.1 and the documentary evidence available in the case record, came to the conclusion that the death of the deceased had occurred on account of injuries, which he received in the accident, which was caused due to the negligent driving of the car bearing No. AP 27A-9599 in which he was traveling along with others at the relevant point of time.

6. There is no much controversy insofar as the negligence, if any, attributed to the car driver is concerned. The only dispute is as to the quantum of compensation awarded by the Tribunal. The appellants main grievance is that the Tribunal without taking into consideration of the evidence given by P.W.1 that her husband was working as Cashier in Bajaj Auto Show Room at Chirala and was getting income of Rs.2,500/- per month, which was not disproved by the other side, which assessed the income at Rs.1500/- per month and thus the Tribunal committed grave error in assessing loss of income that was caused to the family of the deceased due to untimely death etc.,

7. The appellants/claimants case is that in cases of death of a non earning members, the apex Court has taken the income at Rs.3,000/- per month. No valid reason are recorded by the Tribunal to disbelieve the testimony of P.W.1. Though the evidence of P.W.1 is clear and categoric, it simply ignored even though no evidence is coming forth on the side of the respondent disproving the evidence given regarding the income of the deceased. The Tribunal has awarded meager compensation of Rs.1,30,000/- by fixing the income of deceased at Rs.15,00/- per month and that the income so fixed by the Tribunal is contrary to the evidence on record. Hence, this Court can hold without any hesitation that the compensation awarded by the Tribunal is not just and reasonable.

8. The order, dated 10-12-2004 passed by the Tribunal, which is impugned in this appeal is perused by me. The pleadings of the parties, the evidence let in by them in support of their contention is also perused by me.

9. The wife of the deceased is examined as P.W.1 to establish the occupation of the deceased and also the particulars of the income, if any earned by him. It is stated by P.W.1 that her husband was working as a Cashier in Bajaj Auto Show Room at Chirala and was getting income of Rs.2,500/- per month. The evidence given by P.W.1 regarding the income of the deceased has not been disproved by the respondents. The respondents admittedly have not adduced any evidence. The insurance policy of the car alone is marked by him Ex.B1. Except that, no other evidence is produced by the respondent. Since no evidence is available in the case record, the Tribunal may have taken the testimony of P.W.1 into consideration which is almost relevant to assess the income of the deceased. No reasons are assigned by the Tribunal to disprove the testimony of P.W.1 as has been rightly pointed out by the counsel for the appellants. Since the evidence given by P.W.1 in respect of the income of the deceased is inspiring confidence of the Court, there cannot be any hesitation for this Court to assess the income of the deceased by fixing his income at Rs.2,500/- per month.

10. Thus, loss of annual income of the deceased comes to Rs.30,000/-. If one fourth of the income of the deceased is deducted towards personal expenditure, loss of contribution of income of the deceased to his family comes to Rs.22,500/-. If the same is multiplied by 16, the loss of contribution of income of the deceased to his family comes to Rs.3,60,000/-.

11. The Tribunal seems to have awarded a sum of Rs.5,000/- under the head of loss of consortium. Since the

same is found to be unreasonable and unjust, this Court award a sum of Rs.15,000/- towards loss of consortium as against Rs.5,000/-. It is found that no amount is awarded to the appellants by the Tribunal under the head of loss of love and affection. Appellants 2 and 3 have lost their father when they were aged about 4 and 2 years respectively. Appellants 4 and 5, who are the parents of the deceased also lost their beloved son. Upon consideration of the above mentioned aspects, this Court is of the view that awarding a sum of Rs.20,000/- under the head of loss of love and affection is just and reasonable. The amount awarded by the Tribunal under the head of funeral expenses is enhanced to Rs.5,000/- from Rs.4,000/-. Thus, the appellants/claimants are entitled to get total compensation of Rs.4,00,000/-.

12. The amount of compensation, which the appellants are entitled to get exceeds the claim laid by them in the above O.P. As per the legal principle laid down in case of **ADAM INDUR MUTTEMA AND OTHERS V RATHOD REDDIA AND OTHERS**¹, in appropriate cases where the Tribunal considers that the claimants are entitled to get more compensation than the claim made by them, the Tribunal may pass such order, which in its view is just and reasonable. While answering to the question as to whether the Tribunal/Court can award compensation under the Motor Vehicles Act over and above the amount claimed by the claimants though subject to the payment of Court fee etc., has held as follows:

“Thereafter, the very same question fell for consideration of the Apex Court in **NAGAPPA V GURUDAYALA SINGH AND OTHERS**(2003 (1) ALD 1 (SC)= (2003) 2 SCC 274) and the question was answered in affirmative holding that the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In appropriate case, wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal

¹ 2015 (4) ALD 585 (LB)

may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable from the evidence. Such observations were made in the light of the provisions contained in Sections 166 (1) and (4), 158 (6) and 168 of the Motor Vehicles Act, 1988. This view was thereafter reiterated by the Supreme Court in **RAJESH AND OTHERS V RAJBIR SINGH AND OTHERS ((2013) 9 SCC 54); SANJAY VERMA V HARYANA ROADWAY ((2014) 3 SCC 210) AND JITENDRA KHIMSHANIKAR TRIVEDI AND OTHERS V KASAM DAUD KUMBHAR AND OTHERS (2015 (3) ALD 141 (SC)= (2015) 4 SCC 237)**. Thus, in view of the law laid down by the Supreme Court in the aforementioned judgments, the question referred to the Larger Bench must be answered in the affirmative.”

13. As per the legal pronouncement enunciated in the above case law, there is no restriction that the compensation is to be awarded only up to the amount laid by the claimants. If the Court/Tribunal feels that the claimants are entitled to get more compensation than the amount claimed by them, the Court may pass an appropriate order and the order if any passed by the Tribunal/Court must be in consonance with the evidence, which is available in the case record and that the order if any passed by the Tribunal/Court shall not appear to be an arbitrary one. The only condition required to be fulfilled by the claimants is that they have to pay appropriate Court fee.

14. In the result, the appeal is allowed enhancing compensation amount from Rs.1,39,000/- to Rs.4,00,000/-. The appellants/claimants shall pay differential Court fee. The respondents 1 and 2 being the owner and insurer of the car bearing No. AP 27A-9599 are held liable to pay the above mentioned compensation amount jointly and severally together with interest at 7.5% per annum from the date of filing of the petition till the date of realization. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 27th DAY OF APRIL, 2017.

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