

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1098 OF 2005

ORDER:

The order, dated 10-01-2005, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad, (for brevity 'the Tribunal'), in O.P.No.400 of 1999 is assailed in this appeal by the Original Insurance Company, which has been arrayed as 2nd respondent in the above mentioned O.P.

2. Following are the contentions raised by the Insurance Company while making its submission. The first contention of the Insurance Company is that the compensation amount of Rs.8,44,123/- awarded by the Tribunal is highly excessive and exorbitant. Since the Tribunal assessed that the income of the deceased at Rs.4,500/- per month is without any valid evidence. The conclusion, if any, arrived at by the Tribunal regarding the monthly income of the deceased has got no basis at all. The second contention raised by the Insurance Company is that the amount of Rs.3,51,783/- awarded under the head of medical expenses has got no basis and the Tribunal without proper appreciation of evidence available in the case has arbitrarily awarded a sum of Rs.3,51,783/- towards medical expenditure. The third contention of the Insurance Company is that the death of Gaddam Chinna Ganga Reddy (hereinafter referred to as 'the deceased') occurred after elapsement of fourteen months from the date of the accident. Since there was long gap of fourteen months from the date of accident and the death of the deceased, the Tribunal ought not to have held that the injuries received by the deceased in the accident resulted in his death. The Tribunal based on the self drawn presumptions had come to the conclusion that the death of the deceased had occurred on account of injuries sustained by him in the accident which

occurred on 22-11-1998. The fourth contention of the Insurance Company is that the Tribunal erred in awarding interest at 9% per annum on the compensation amount instead of 7.5% per annum ignoring the authoritative pronouncement made in **NIAC LTD., V CHARLIE** (2005 (1) Decision Today (S.C.) 395). These were the grounds urged by the Insurance Company to assail the order passed by the Tribunal.

3. In the light of the aforementioned contentions of the Insurance Company, now the question that falls for consideration before this Court is that whether the compensation awarded by the Tribunal is excessive and exorbitant as contended by the Insurance Company.

4. Before advertng to the attention of the Court on the consentaneous issue raised by the Insurance Company, there is a need to state the facts, which are not in dispute. The Insurance Company in the instant case has not disputed the occurrence of the accident and also the agreement if any, entered into by it with the owner of the offending vehicle agreeing to indemnify its liability in case the occurrence of the accident resulting in death or bodily injury of the third parties etc., There may not be any dispute on the fact that the death of the deceased occurred after filing of the claim petition by him. Respondents 2 to 4, who are the wife and children of the deceased are brought on record after the death of the original claimant-Gaddam Chinna Ganga Reddy. They have got amended their pleadings by enhancing their claim to Rs.12,00,000/- from Rs.8,00,000/-.

5. That on the fateful day i.e., on 22-11-1998 at about 12.45 p.m., while the original claimant-Gaddam Chinna Ganga Reddy was proceeding to Armoor on his scooter bearing No.AP-25/E-37 along with Badya Kishan,

when both reached the outskirts of Argul village, a scooter bearing No.AP-25/E-1826 driven by its driver Nallavelly Kishan with high speed in a rash and negligent manner gave a hit to their scooter bearing No.AP-25/E-37, as a result of which, the original claimant-Gaddam Chinna Ganga Reddy, who was proceeding as a pillion rider in the afore mentioned scooter sustained injuries to his nose, forehead, on the back of the head, left wrist right hand, both knees and other parts of the body apart from injury to the right eye, due to which, the vision of it was lost completely. Soon after the accident, the original claimant was taken to Tirumala Nursing Home by the claimants and from there to Yashoda Super Specialty Hospital, Hyderabad.

6. The claimants could able to produce evidence before the Tribunal to substantiate their contention that the death of the original claimant occurred due to Septicemia due to the pus collection at old fracture site and underneath of it as a sequele of previous head injury. The post-mortem certificate issued by the Government Hospital, Armoor, where the dead body of the original claimant was shifted would clinchingly establish the fact that the death of the original claimant occurred due to pus collection at the old fracture site. The inquest report-Ex.A25 also would indicate that the original claimant met with motor accident and received severe injuries and underwent treatment in Yashoda Hospital, Hyderabad and Pragati Hospital, Nizamabad and he died due to injuries received in the motor accident. Based on the post-mortem report and inquest report, the Sub-Inspector of Police, Jakranpally Police Station, who registered a case initially against the rider of the scooter bearing No.AP-25/E-1826 under Sections 337 and 338 IPC, altered the Section of Law to 304-A IPC and filed the altered charge sheet before the Judicial Magistrate of I Class, Armoor. The documents produced by the claimants would indicate that that on account of negligent

driving of the scooter bearing No.AP-25/E-1826 by its driver Nallavelly Kishan, the accident dated 22-11-1998 had occurred.

7. The Tribunal in its order at paras 10 and 11 dealt with the issue framed relating to negligent and upon holding extensive discussion came to the conclusion that the accident dated 22-11-1998 occurred only on account of the rash and negligent driving of the scooter bearing No.AP-25/E-1826 by its driver as the injuries sustained by the deceased in the said accident resulted in his death etc., The Insurance Company had not examined the driver of the afore mentioned scooter or the pillion rider to establish that there was no negligence on the part of the rider/driver of the scooter bearing No.AP-25/E-1826 and that the deceased himself contributed for occurrence of the accident. Since no evidence was adduced to believe the contention of the Insurance Company that the deceased himself contributed for occurrence of the accident, the Tribunal relying on the un-rebutted testimony of P.W.2, who was the eye-witness to the accident and the other documents namely Ex.A1-F.I.R. and Ex.A22-charge sheet, which were filed by the police after through investigation of the case etc., had given a finding that the above mentioned accident had taken place due to negligent driving of the scooter bearing No.AP-25/E-1826 by its driver.

8. The Tribunal at Para 19 of its order made an elaborate discussion in respect of the proximate cause of the death of the deceased. Taking into consideration the evidence given by P.W.1-Gaddam Gunnavva, the wife of the deceased and other material documents such as post-mortem report (Ex.A23) apart from F.I.R (Ex.A24) and inquest report (Ex.A25) and the final report had come to a conclusion that the death of the deceased occurred on account of the injuries received by him in the accident as clearly enunciated in Ex.P23-post-

mortem report, which was the basis for police of Jakranpally P.S. to alter the F.I.R. from 337 and 338 IPC to 304-A IPC. The Insurance Company had not adduced any evidence disputing the oral and documentary evidence produced by the claimants.

9. The Tribunal on appreciation of evidence given by P.W.3, Dr. P. Ranganathan, Neuro Surgeon, who was attached to Yashoda Hospital, Hyderabad, under whose care the deceased had taken treatment and other material documents produced by the claimants namely Medico legal record, original discharge summary form, medical report and the medical bills (Ex.A9 to A19) had awarded a sum of Rs.3,51,783/- under the head of medical expenditure. That a close scrutiny of Exs.A13 to A15 and 19-medical bills produced by the claimants, this Court had not noticed any substantial material to hold that the Tribunal erred in awarding a sum of Rs.3,51,783/- towards medical expenditure.

10. Since the claimants could not establish that the deceased was having his own tractor, and was cultivating his land of Ac.6.13 guntas for which, he was issued with pattadar pass book-Ex.A27 and pahani etc. The Tribunal had rightly assessed the income of the deceased at Rs.4,500/- per month. This Court did not find any material to hold that the Tribunal erred in assessing the income of the deceased at Rs.4,500/- per month. The assessment, if any made by the Tribunal by considering his age mentioned in the post-mortem report and the other relevant documents, such as pattadar pass book and pahani and other documents at Rs.150/- per day cannot be held as incorrect. The Tribunal by placing reliance on the case law reported in **BHAGAWANDAS V MOHD. ARIF** (1987 ACJ 1052) had arrived at a conclusion that the relevant multiplier applicable for the persons in the age group of 39 years was 13.19. The tribunal by applying multiplier 13.19, had rightly

awarded a sum of Rs.4,74,840/- towards loss of income on considering the income of the deceased at Rs.150/- per day. The Tribunal by adding a sum of Rs.3,51,783/- which was awarded under the head of 'medical expenditure', and another sum of Rs.15,000/- under the head of loss of consortium and Rs.2,500/- under the head of funeral expenses, had awarded total compensation of Rs.8,44,123/-.

11. This Court had not noticed any factual or legal error in the order passed by the Tribunal. However, agreeing with the contention of the Insurance Company that the interest awarded by the Tribunal at 9% p.a. is highly excessive, this Court is inclined to reduce the rate of interest at 7.5% per annum from 9% p.a.

12. This appeal is allowed in part accordingly. The claimants are entitled for compensation of Rs.8,44,123/- together with interest at the rate of 7.5% p.a., from the date of filing of the petition till realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 21ST DAY OF APRIL, 2017.

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