

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2605 of 2005

JUDGMENT

The appellants/claimants preferred this appeal against the order and decree dated 01.02.2005 passed in O.P.No.343 of 2003 by the Chairman, Principal Motor Accidents Claims Tribunal, Nalgonda.

2. Heard learned counsel for appellants/claimants and learned counsel for second respondent-insurer and perused the record.

3. The facts, in brief, are that on 31.01.2003 at about 10.30 PM., while the deceased Wadapalli Saidulu and others were traveling by auto bearing No.AP-21-T-450, a lorry bearing No.AP-11-W-6799 driven by its driver in a rash and negligent manner, dashed against the auto, due to which, Saidulu and another died on the spot and other passengers received injuries. Due to sudden death of deceased, the claimants being parents lost his love, affection and deprived of his earnings. Hence, they filed the claim petition claiming compensation of Rs.3,00,000/- against respondents.

4. The first respondent remained *ex parte*. The second respondent filed counter denying the averments made in the claim petition and disputed the age and income of the deceased.

5. Based on the pleadings, the Tribunal framed the point for consideration. To substantiate the claim, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of the claimants.

No evidence was adduced on behalf of respondents, but Ex.B1 was marked.

6. After considering the entire evidence on record, the Tribunal awarded compensation of Rs.1,40,840/- with interest at 8% per annum from the date of filing of O.P. i.e., 29.03.2003 till the date of award and @ 5% per annum from the date of award till date of deposit or realization.

7. Learned counsel for appellants/claimants would submit that the Tribunal has wrongly taken the age of the mother of deceased as 50 years in stead of 40 years and also the monthly earnings of deceased at Rs.1,430/- in stead of Rs.5,000/- and granted meager compensation, which is quite unreasonable and ultimately, he prayed to enhance the compensation.

8. On the other hand, learned counsel for second respondent-insurer would submit that the Tribunal has calculated the compensation on all scores and there is nothing to enhance the compensation and that there is no infirmity in the order impugned and ultimately, he prayed to dismiss the appeal.

9. The point that arises for consideration is, whether the appellants are entitled for enhancement of compensation?

10. There is no dispute with regard to rashness and negligence on the part of the driver of crime lorry bearing No.AP-11-W-6799. To establish the claim, the mother of deceased was examined as P.W.1 and an eyewitness was examined as P.W.2 and Ex.A1-Certified

copy of FIR, Ex.A2-Certified Copy of charge sheet, Ex.A3-Certified copy of inquest, Ex.A4-Certified copy of PME report, Ex.A5-copy of scene of offence, Ex.A6-copy of MVI report and Ex.A7-copy of Insurance Policy were marked. Ex.B-1 copy of insurance policy was marked on behalf of the second respondent-insurer. The evidence of P.Ws.1 and 2 and the said documents reveal the rashness and negligence on the part of the driver of crime lorry resulting the death of two persons and injuries to the other passengers of the auto. Therefore, it can be safely concluded that due to rash and negligent driving of the driver of lorry by its driver, the accident occurred.

11. As seen from Ex.A3-certified copy of inquest and Ex.A4-certified copy of post mortem report, the age of deceased was mentioned as 21 years. There is nothing to disbelieve the same. As per the evidence of P.Ws.1 and 2, the deceased was earning a sum of Rs.5,000/- per month as Collie at the time of accident, but there is no proof to substantiate the same. It is apt to mention that the Tribunal has not taken the correct multiplier as well as the earnings of the deceased. Therefore, the monthly earnings of deceased can be taken at Rs.3,000/- per month and annually at Rs.36,000/-. As per the record, the age of the mother of deceased (P.W.1) was 40 years and therefore, her age can be taken for assessment of compensation payable to the claimants as per the decision of the Apex Court in **Sarla Verma and others v. Delhi Transport Corporation and another**¹ and that the appropriate multiplier for the age group of 40 years is '15'. Therefore, the loss of dependency

¹ (2009) 6 SCC 121

due to the death of deceased comes to Rs.36,000/-x15= 5,40,000/-, out of which, half of the amount is deducted towards his personal expenses as the deceased was bachelor and it comes to Rs.2,70,000/-. Further, the claimants are also entitled to a sum of Rs.30,000/-towards loss of love, affection and estate. In all, the claimants are entitled to the compensation of Rs.3,00,000/- as claimed by them. Accordingly, the point is answered.

12. In the result, the appeal is allowed in part, modifying the award passed by the Tribunal by enhancing the compensation from Rs.1,40,840/- to Rs.3,00,000/- with interest at 7.5% per annum from the date of filing of O.P. till the date of payment. Both the appellants/claimants are entitled to compensation in equal shares. All other conditions imposed by the Tribunal are unchanged. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

4th October, 2017

sj

Dr. SHAMEEM AKTHER, J