

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.2008 of 2009

Date: -06-2017

Between:

B. Shankar Singh and others.

... Petitioners.

And

C.H. Nirmala and another.

... Respondents



THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.2008 of 2009**JUDGMENT:**

The appellants aggrieved by the decree and award of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle in O.P No.211 of 2005, dated 23-11-2006, preferred this appeal on the grounds besides other grounds that Tribunal erred in disbelieving the appellants' evidence and wrongly taken the annual income at Rs.15,000/-. Further the Tribunal failed to consider Ex.A7-medical bills, while awarding compensation. The multiplier applied by the Tribunal is incorrect and no amount was awarded towards love and affection. On the other hand, respondents contended that the appellants failed to prove Ex.A7-Medical bills, the Tribunal well appreciated the oral and documentary evidence on record and awarded just compensation, which do not suffer from any legal infirmities.

2. There is no dispute that the appellants filed the claim under Section 166 of the Motor Vehicles Act claiming compensation of Rs.3,00,000/- for the death of their son-B. Sreedhar Singh in a motor car accident dated 30-11-2004 at 01:15 P.M., involving a motor car bearing No.AP 07 U 9103. Since the appellants are claimants, there is no dispute in the appeal regarding rash and negligent driving of the car bearing No.AP 07 U 9103.

3. The main contention of the appellants is that the medical bills-Ex.A7 are not considered, the Tribunal has taken annual income of the deceased at Rs.15,000/-, which is erroneous and the multiplier applied is incorrect. The claimants, who approached the Tribunal for compensation of their son's death, they have to produce evidence and

prove age, occupation and income of the deceased at the time of the accident.

4. Admittedly, the appellants did not file any document showing the age, occupation and income of the deceased. P.W.1 is no other than the mother of the deceased and P.W.2 is an eye witness to the accident. The evidence of P.W.2 supported with Ex.A1-First Information Report, Ex.A2-altered F.I.R., Ex.A4-inquest report, Ex.A5-charge sheet and Ex.A6-MVI report established the rash and negligence of the driver of the car bearing No.AP 07 U 9103.

5. When the claimants proved by producing convincing evidence the rash and negligent driving of the driver, then the burden is shifted to the respondents to adduce rebuttal evidence to the effect that there is no rash and negligent driving on the part of the driver of the offending vehicle. The motor vehicle Inspector under Ex.A6 clearly certified that the accident is not due to any mechanical defects of the vehicle. The inquestdars under Ex.A4 opined that due to the injury sustained in the accident involving car bearing No.AP 07 U 9103, deceased succumbed to injuries and the investigating officer filed the charge sheet under Ex.A5 finding that the accident was due to rash and negligent driving of the driver of the car.

6. With regard to the age of the deceased, the claimants have not placed any cogent material so as to discharge their burden. More so, Ex.A3-Post mortem certificate, Ex.A4-inquest report and Ex.A5 charge sheet, the age of the deceased was recorded as 15 years that according to the claim petition, the deceased was aged about 17 years.

7. In such circumstances, the Tribunal, relying on the documents under Exs.A3 & A4 and in the absence of any convincing material, came to the conclusion that the deceased was 15 years, which finding is not rebutted by the respondents by adducing any rebuttal evidence.

8. With regard to the income asserted in the claim petition, the deceased used to earn Rs.150/- per day by doing business in perfume. The petitioners did not produce any piece of paper and document in proof that the deceased was doing business in perfume and used to earn Rs.150/- per day. In the case of **MUNNALAL JAIN AND ANOTHER vs. VIPIN KUMAR AND OTHERS**¹, wherein their Lordships held that the income of the bachelor as a self-employed and Pandit, assessed at Rs.12,000/- per month, adding 30% towards future prospects and deducted 50% towards personal expenses, because he was a bachelor and was aged 30 years and applied multiplier '17', but in the instant case, the deceased was 15 years and he was a minor and non-earning member.

9. The Tribunal, having considered all those facts since the deceased was unmarried and aged 15 years, took the age of the mother-P.W.1 and applied that multiplier '15'.

10. In view of the fact that the deceased was minor aged about 15 years and no proof of any income, the Tribunal rightly took the age of the mother-second petitioner as 39 years. There is no error or infirmity in such finding of the Tribunal.

¹ (2015) 6 Supreme Court Cases 347)

11. In the case relied on by the petitioners-appellants, the age of the deceased was 30 years, he was self-employed working as a Pandit, whereas in our case, the deceased was minor aged about 15 years and not as self-employed. Therefore, this decision has no application to the facts of the case. The Tribunal well considered the age of the deceased and took the age of P.W.1 who was 39 years as per evidence and claim petition and this Court took age of the mother was 39 years. According to **RESHMA vs. MADAN MOHAN** (2013) 9 SCC 65, the mother is age group of 26 to 30 years, appropriate multiplier is '15' as considered by the Tribunal and accordingly, there is no error in application of the multiplier 15 also. Since the deceased was minor and bachelor, 50% shall be deducted towards personal expenses.

12. Absolutely, there is no proof of income to the P.W.1. Having considered the nature of evidence of P.W.1, I find that she is a house wife and the monthly income of P.W.1 can be assessed at Rs.3,500/- per month and for which total annual income comes to Rs.3,500/- x 12 = Rs.42,000/-, since the claimants are two in number, 1/3rd amount deducted from this, which comes to Rs.42,000/- - 14,000/- (1/3rd) = 28,000/-. The total income multiplied with multiplier which comes to (Rs.28,000/- x '15') = Rs.4,20,000/-. The petitioners-appellants filed Ex.A7-bunch of medical bills, which comes to Rs.59,724/- for which the petitioners are entitled to and accordingly, I award Rs.59,724/- for the total medicines . The only suggestion to P.W.1 is that Ex.A7-medical bills are created for the sake of this case. When the petitioners-appellants filed the medical bills and there is no rebuttal evidence produced by the respondents, the Tribunal has to consider and believe those bills and should have

awarded the same as expenses for medicines, since the deceased after the accident on 30-11-2004 took treatment in Government Hospital, Madanapalli and also in Sri Venkateswara Institute of Medical Sciences, Tirupathi and ultimately died on 13-12-2004 while taking treatment.

13. Though the Tribunal, having considered those facts that the deceased met with accident on 13-04-2004 took treatment in Government Hospital and Sri Venkateswara Institute of Medical Sciences, Tirupathi and he was under precarious condition for a period of 13 days, it would be held that the petitioners-appellants have not incurred any amount towards medical expenses and other expenses only awarded Rs.22,000/- though Ex.A7-bunch of medical bills, which comes to Rs.59,724/- which is erroneous and not tenable.

14. Ex.B1 is the policy issued by the second respondent, which is in force by the date of the accident. Ex.B2 is the driving licence extract of the driver. The Tribunal elaborately discussed the evidence of Ex.A2-FIR and came to the conclusion that the driver of the offending vehicle was having driving licence to drive light motor non transport vehicle, whereas the offending vehicle is a passenger carrier i.e., insured as passenger carrier i.e., transport carriage vehicle. In such circumstances, the Tribunal held that when the driver was having licence to drive the light motor transport vehicle, it cannot be held that he cannot drive the light motor transport vehicles particularly, while deciding the liability of the second respondent against the third parties by relying in case of **M. Bala Subramanya**

vs. Pradyumna and others (reported in AIR 2006 (NOC) at page 856 KARNATAKA).

15. Accordingly, I award Rs.15,000/- towards loss of estate, Rs.7,000/- towards extra nourishment, Rs.3,000/- towards transportation and Rs.10,000/- towards funeral expenses. Therefore, the claimants are entitled to a total compensation of Rs.5,14,724/-.

16. Accordingly, the appeal is allowed while setting aside and modifying the award of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle in MVOP.No.211 of 2005, dated 23-11-2006 and awarded a total compensation of Rs.5,14,724/ with subsequent interest at the rate of 7.5% per annum from the date of petition i.e., on 10.11.2005 till the date of deposit, which shall be deposited by the respondents within a month from the date of the receipt of a copy of this judgment, after adjusting the amount, if any, already paid/deposited.

17. Out of the aforesaid total compensation, Rs.3,00,00/- is apportioned to the first appellant-first claimant and remaining compensation of Rs.2,14,724/- is apportioned to the second appellant-second claimant.

18 On deposit of the aforesaid compensation, the appellants-claimants are entitled to withdraw their share of compensation proportionately.

19. Advocate fee is fixed at Rs.2,000/-

20. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of. No costs.

Date: .06.2017
mrb

JUSTICE N. BALAYOGI

