

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2145 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellants-petitioners in M.V.O.P. No.960 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XXI Additional Chief Judge-cum-Additional Metropolitan Sessions Judge for the trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Red Hills, Nampally, Hyderabad (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.1,59,000/- with interest at 7.5% per annum from the date of petition till realisation, vide the order dated 17.02.2006, as against the claim of Rs.4,00,000/-, for the death of Gurram Edaiah, who is husband of appellant No.1 and father of appellant Nos.2 to 4, in a road accident occurred on 01.04.2002.

2. The case of the appellants would show that on 01.04.2002 at about 10-00 p.m., when the deceased was going on foot from S.D.Eye Hospital, Masab Tank, towards Mehdiapatnam, a splendor motorcycle bearing registration No.AP 13E 3905, driven by its driver in a rash and negligent manner at high speed, came without following traffic rules and dashed the deceased, due to which, the deceased fell down on the road and sustained grievous injuries on the head and other parts of the body and immediately, he was shifted to Osmania General Hospital and while undergoing treatment, he died in the hospital. The appellants-petitioners stated that the deceased was aged about 45 years, hale and healthy and was working as a stone cutter, earning Rs.3,000/- per month and contributing the same to the family and due to the accident, they lost their sole bread earner, claimed Rs.4,00,000/- as

compensation from respondent Nos.1 and 2, who are the owner and insurer of the motorcycle bearing registration No.AP 13E 3905.

3. Respondent Nos.1 and 2 filed separate counters before the Tribunal, denying all the material allegations mentioned in the petition and contended that the amount claimed by the appellants is excessive and exorbitant. Respondent No.1-owner contended that motorcycle was insured with respondent No.2 and the insurance policy was valid at the time of the accident and therefore, respondent No.2-insurer is alone has to pay compensation, if any awarded. Respondent No.2-insurer contended that the accident vehicle is not having valid and subsisting insurance policy at the time of accident and the driver of the vehicle also had no valid and effective driving licence and therefore, it is not liable to pay any compensation to the appellants. Finally, both the respondents prayed to dismiss the claim petition against him.

4. The Tribunal, after framing three issues and considering the evidence of P.Ws.1 to 3 and R.W.1 and Exs.A.1 to A.11 and Ex.B.1, awarded compensation of Rs.1,59,000/- with interest at 7.5% per annum from the date of petition till realisation, in favour of the appellants-petitioners against respondent Nos.1 and 2. Challenging the said award, the appellants-petitioners preferred the present appeal seeking enhancement of compensation.

5. Heard both the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record. The appeal against respondent No.1-owner is dismissed on 05.07.2016 for default. However, dismissal of the

appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"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."

6. The contention of the learned counsel for the appellants-petitioners is that the deceased was aged 50 years, working as a stone cutter and earning Rs.4,000/- per month and though there is evidence to record the same, the Tribunal has not considered the same; the amounts granted by the Tribunal towards funeral expenses, loss of estate and loss of consortium are very meagre amounts; and therefore, prayed to enhance the compensation as prayed for.

7. On the other hand, learned Standing Counsel for respondent No.2-insurer contended that the Tribunal has rightly granted just and adequate compensation to the appellants-petitioners; there are no mitigating

¹ 2001(1) ALT 495 (D.B.)

circumstances to enhance the compensation; and finally, prayed to dismiss the appeal.

8. Perused the order and the evidence on record. The manner in which the accident had taken place, causing death of the deceased-Gurram Edaiah, is not in dispute. The record shows that there is no violation of terms and conditions of the insurance policy of the accident vehicle, which was in force by the date of the accident. Dealing with this issue, the Tribunal has elaborately assigned reasons and no other opinion can be substituted, also held that both respondents are jointly and severally liable to pay the compensation.

9. Coming to the quantum of compensation, the Tribunal has taken the average income of the deceased as Rs.1,500/- per month, deducted 1/3rd therefrom towards personal living expenses of the deceased, taken multiplier '11' and granted Rs.1,32,000/- towards loss of dependency. The Tribunal also granted Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.15,000/- towards loss of consortium. The evidence of P.Ws.1 and 2 reveals that the deceased was a stone cutter, earning Rs.3,000/- to Rs.4,000/- per month. As per Ex.A.6-copy of inquest report also, the profession of the deceased is shown as 'labourer'. The Tribunal holding that the labourers do not get work for 30 days in a month, taken the earnings of the deceased as Rs.1,500/- per month. The accident occurred on 01.04.2002 and the earnings of a labourer in those days are relevant for determination of compensation. In these circumstances, the income of the deceased can be taken as Rs.2,000/- per month or 24,000/- per annum. Out of the same, 1/3rd has to be deducted towards personal living expenses of the deceased, it is Rs.8,000/- per annum, and when the same is deducted, the

contribution of the deceased to the family comes to Rs.16,000/- per annum. The Tribunal has taken multiplier '11' as per the age of the deceased, i.e., 50 years at the time of death. Whereas, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**², relevant multiplier for the age of the deceased is '13'. When the same is applied, compensation towards loss of dependency comes to Rs.2,08,000/- (Rs.16,000/- x '13'). The amounts of Rs.2,000/- towards funeral expenses and Rs.10,000/- towards loss of estate granted by the Tribunal are maintained and the amount of Rs.15,000/- granted by the Tribunal towards loss of consortium is enhanced to Rs.25,000/-. In all, the appellants-petitioners are entitled to a sum of Rs.2,45,000/- as against the amount of Rs.1,59,000/- granted by the Tribunal.

10. So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 7.5% per annum from the date of petition till realization and the same is maintained on the enhanced amount also, as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**³.

11. Accordingly, this appeal is allowed in part modifying the order dated 17.02.2006 passed by the Tribunal, enhancing the compensation from Rs.1,59,000/- to Rs.2,45,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. Petitioner No.1, being the wife of the deceased, is entitled to the enhanced compensation amount and interest thereon, in addition to the amount already awarded by the Tribunal to her. The appellants-petitioners are permitted to withdraw their amounts with interest. The other terms of the order under challenge remain unchanged.

² (2009) 6 SCC 121

³ 2013 ACJ 1403

12. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 17.03.2017

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