

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

MACMA No.138 of 2006

JUDGMENT:

This appeal arises from the judgment dated 12-05-2005 in O.P.No.443/2002 on the file of Chairman, MACT-cum-I Additional District Judge at Nalgonda.

2. This is an appeal preferred for enhancement of compensation by the claimants. The Tribunal awarded compensation of Rs.3,02,000/- on account of the death of Shaik Madhar in a motor vehicle accident occurred on 24-03-2002.

3. The brief facts of the case are that appellants are the legal heirs of the deceased and they filed a petition under Section 166 read with Section 140 of the Motor Vehicles Act before the Tribunal claiming compensation of Rs.3,00,000/- which was enhanced later to Rs.5,00,000/- by way of amendment. The appellants are the legal heirs of the deceased – Shaik Madhar, who died in a motor vehicle accident occurred on 24-03-2002. On the fateful day, the deceased was returning on his bicycle on the extreme left side of the road from Shanthiniketan School at Damercherla Village. In the mean time, one lorry bearing No.AP.7.W.2268 came from Miryalaguda side driven in a rash and negligent manner at high speed dashed to the deceased from his backside, resulting the deceased fell down on the ground and the lorry ran over him. The deceased received grievous injuries on his testicles, abdomen and he died on the way to the hospital. The accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP.7.W.2268 belongs to R1, which was insured with R2.

The deceased was hale and healthy aged about 31 years used to earn Rs.4,000/- per month as a driver. Due to the sudden death of the deceased, the dependants have deprived of the income and services of the deceased. The respondent No.1 had remained *ex-parte*. The second respondent filed counter denying the allegations made against the driver of the lorry about his rash and negligent act. The age, income and health conditions of the deceased are disputed. The validity of the driving licence of the driver of the crime vehicle is also disputed. It is also contended that the driver of the crime vehicle was not having valid license, the crime vehicle was not having valid registration & permit and fitness certificate. On these grounds, sought for dismissal of the O.P.

4. The Tribunal, on consideration of the evidence of P.Ws.1 to 3 and the documents Exs.A1 to A2 and Ex.P1-Insurance Policy, has awarded compensation of Rs.3,02,000/- as against the claim of Rs.5,00,000/-.

5. Heard the arguments of learned counsel for the appellants- Sri Chandra Shekar Reddy Gopireddy and Sri P. Harinadh Gupta, the learned counsel for respondent No.2-New India Assurance Company Ltd.

6. The learned counsel for the appellants submits that the Tribunal held that the respondents 1 & 2 are liable to pay the compensation wholly that the driver of the crime vehicle was rash and negligent in driving the vehicle consequently, making the

respondent No.1 the owner of the vehicle and the respondent No.2 insurer of the vehicle liable.

7. The dispute now is only with regard to the quantum of compensation awarded by the Tribunal whether it is adequate or it is to be enhanced.

8. The learned counsel for the appellants submits that the deceased was 30 years old by the date of the accident. The multiplier applicable to his age was '17'. His income was Rs.4,000/- per month. But the Tribunal has taken the income of the deceased as Rs.2,000/- per month though he was a driver of the heavy motor vehicle.

9. As far as the evidence of P.W.1 the wife of the deceased is concerned, the deceased was earning Rs.4,000/- per month. P.W.3-Sk.Subhani, the owner of the lorry in which the deceased was working till his death, testified that he used to pay Rs.3,500/- per month as wages in addition to batta of Rs.50/- per day to the deceased. The Tribunal has brushed aside this evidence of P.Ws.1 & 3 stating that it is only a oral evidence and there is no documentary proof, had taken into consideration the income of the deceased as Rs.3,000/- per month. Admittedly, the deceased was a driver of the heavy motor vehicle by the date of accident. The owner of the vehicle has come to witness box and stated that he has paid Rs.3,500/- per month and batta of Rs.50/- per day. Usually, the owners of the lorry do not maintain any registers showing the payments made to the drivers. Therefore, the evidence of P.W.3 coupled with the evidence of P.W.1 can be taken

into consideration for assessment of the salary of the deceased. Even otherwise, the minimum wages for an unskilled laborer can be taken as Rs.3,000/- per month. Therefore, the income of the deceased is taken into consideration as Rs.3,000/- per month for the purpose of calculation of compensation. Accordingly, the compensation is calculated. The annual income comes to Rs.3,000 X 12 = Rs.36,000/-. Keeping in view the size of the family as it consisted five members, the expenditure of the deceased, an extent of 1/4th amount is reduced as against the amount of 1/3rd reduced by the Tribunal is Rs.36,000 - 9,000 = 27,000/-. The Tribunal applied the multiplier '17' for the age of the deceased 31 years as per II Schedule under Section 163-A of the Motor Vehicles Act. But in the light of the decision rendered in **SARLA VERMA (SMT) AND OTHERS vs. DELHI TRANSPORT CORPORATION AND ANOTHER¹**, the multiplier for the age of 31 years is '16'. On application of the multiplier '16', which comes to Rs.27,000 X '16' = 4,32,000/-.

10. The Tribunal awarded consortium of Rs.15,000/- and non pecuniary damages of Rs.15,000/-. The amounts awarded by the Tribunal under these heads does not require any interference.

11. The multiplier applicable to the age of the deceased in the age group of 31 to 35 is '16' as per the decision rendered by the Apex Court in the case of **SARLA VERMA (SMT) AND OTHERS vs. DELHI TRANSPORT CORPORATION AND ANOTHER¹**. The Tribunal has followed the II Schedule to the Motor Vehicles Act and applied the multiplier '17' in this case. When the decision of

¹ (2009) 6 Supreme Court Case 121

SARLA VERMA (SMT) AND OTHERS vs. DELHI TRANSPORT CORPORATION AND ANOTHER

was made applicable to this case, the multiplier applicable to the age of the deceased is '16'. No doubt, the appellants have sought for enhancement of compensation, but while calculating the compensation, when the income of the deceased is taken to be into consideration along with the age and the multiplier, the following compensation is arrived at. Rs.27,000/- X '16' = 4,32,000/- + 30,000/-(consortium Rs.15,000/- + non pecuniary damages Rs.15,000/-) = 4,62,000/- .

12. The Tribunal has not awarded any amount for funeral expenses. Therefore, Rs.10,000/- awarded towards funeral expenses. On consideration of the evidence on record, the compensation is enhanced as shown in the Tabular Form given below:-

Sl.No.	Various Heads	Awarded by Tribunal Rs.	Enhanced amount Rs.
1.	Loss of Dependency	2,72,000/-	4,32,000/-
2.	Consortium	15,000/-	15,000/-
3.	Non pecuniary damages	15,000/-	15,000/-
4.	Funeral Expenses	---	10,000/-
	Total:	Rs.3,02,000/-	Rs.4,72,000/-

13. On a consideration of the evidence on record, the compensation awarded by the Tribunal Rs.3,02,000/- is enhanced to Rs.4,72,000/-.

14. In the result, the appeal is partly allowed. The compensation of Rs.3,02,000/- awarded by the Tribunal is enhanced to Rs.4,72,000/-. The rate of interest @ 9% per annum from the date of petition till realisation on the amount of Rs.3,02,000/- and interest @ 7.5% from the date of enhancement till realisation on the enhanced amount. No costs.

15. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

Date:02-02-2017.
mrb

JUSTICE G. SHYAM PRASAD



