THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1655 OF 2007

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellants/petitioners challenging the judgment and award, dated 05.08.2003 passed in O.P.No.1170 of 2001 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 25.10.2000 at about 11:30 AM, one Ramesh (hereinafter referred to as 'the deceased') along with others was proceeding to Hyderabad from Nelapatla Village in the lorry bearing No.AP-13V-9936. When they reached near Malkapuram Village, the lorry bearing No.AP-16T-9403 was stationed on the left side of the road. In the meanwhile, the driver of the lorry bearing No.ADT-7837 had driven the same in a rash and negligent manner and dashed against the stationed lorry bearing No.AP-16T-9403 and thereafter dashed against the lorry bearing No.AP-13V-9936. The accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ADT-7837 against whom, the Station House Officer, Chotuppal Police Station, registered a case in Crime No.121 of 2000 for the offences punishable under Sections 304-A and 338 I.P.C. Due to accident, the deceased sustained injuries on various parts of the body and died on the spot. By the time of accident, the deceased was aged about 22 years and used to earn Rs.3,000/- per month apart from batta of Rs.50/- per day as a lorry cleaner. Petitioner Nos.1 and 2 are parents and petitioner Nos.3 to 5 are unmarried sisters of the deceased. The petitioners are dependants on the income of the deceased. The lorry bearing No.ADT-7837, which belongs to the first respondent, was insured with the second respondent company vide cover note No.293530/2000 with effect from 17.09.2000 to 16.09.2001. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioners with interest at the rate of 24% per annum.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the first respondent by colluding with the petitioners did not inform the manner of accident to this respondent. The first respondent had violated the terms and conditions of policy. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the deceased died in the accident on account of rash and negligent driving of the lorry bearing No.ADT 7837 by its driver?

(2) Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?

(3) To what relief?

6. During the course of enquiry, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the second respondent, no oral evidence was adduced and Ex.B.1 policy was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ADT-7837, which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.2,19,500/- with interest at the rate of 9% per annum from the date of petition till the date of realisation.

8. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimants preferred the present appeal claiming difference amount of Rs.80,500/-.

9. Learned counsel for the appellants-petitioners strenuously submitted that the Tribunal has not considered avocation of the deceased and awarded a meagre amount. He further submitted that the Tribunal ought to have applied the multiplier '18' instead of '15'. He also submitted that the Tribunal awarded meagre amount; therefore, it is a fit case to allow the appeal.

10. *Per contra,* learned counsel for the second respondent submitted that the Tribunal awarded just and reasonable compensation to the petitioners; therefore, it is not a fit case to interfere. He further submitted that the petitioners failed to prove the income of the deceased; therefore, the Tribunal has taken the income of the deceased as Rs.1,800/- per month.

11. Now the points that arise for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ADT-7837? and
2. Whether the compensation awarded by the Tribunal is just and reasonable?

POINT No.1:

12. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ADT-7837, which resulted in the death of the deceased. The finding recorded by the Tribunal on point No.1 became final in view of non-filing of the appeal by respondent Nos.1 and 2. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ADT-7837, which resulted in the death of deceased. This point is answered in favour of the petitioners and against the respondents.

POINT No.2:

13. A perusal of the record reveals that the Tribunal has taken the age of the mother of the deceased in order to apply the appropriate multiplier. O.P. was disposed of in the year 2003. The Tribunal has taken the age of the mother of the deceased while following the law prevailed as on that day. As per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and another[1],** the Tribunal has to take into consideration the age of the deceased. As per the principle

[1] (2009) 6 SCC 121

enunciated in **National Insurance Company Ltd. Vs. Pranay Sethi and others[2],** the age of the deceased has to be taken into consideration in order to assess the loss of dependency. Having regard to the facts and circumstances of the case and also the principle enunciated in the case second cited supra, the age of the deceased has to be taken into consideration in order to assess the loss of dependency. As per Ex.A.4 post-mortem report, the deceased was aged about '24' years as on the date of accident. As per the principle enunciated in **Sarla Verma**'s case (1 supra), the appropriate multiplier to be taken for the age group of 15-25 is '18'. Except the self served testimony of PW.1, there is no other convincing evidence to prove that by the time of death, the deceased was earning Rs.4,500/- per month. It is not uncommon to exaggerate the income of the deceased in order to claim more compensation. The petitioners did not choose to examine the owner of the lorry bearing No.ADT-7837 in order to prove the income of the deceased. As rightly pointed out by the learned counsel for the appellants, the Tribunal has not considered the income of the deceased in right perspective. Even under the Minimum Wages Act, the deceased may earn Rs.2,500/- per month in the year 2000. Hence, this Court is inclined to take the income of deceased as Rs.2,500/- per month. As per the principle enunciated in **National Insurance Company Ltd.** (2 supra), 50% of the income of the deceased has to be deducted towards his personal expenses. The deceased may contribute Rs.1,250/- per month (2500-1250) to his family members. The loss of dependency comes to Rs.2,70,000/-(1250 x 12 x 18). As per the principle

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[2] AIR 2017 SC 5157

enunciated in **National Insurance Company Ltd.** (2 supra), this Court is inclined to award an amount of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

The amount of compensation awarded under various heads is as follows:

Loss of dependency:	Rs.2,70,000/-
Loss of estate and funeral expenses:	Rs. 30,000/-
Total:	Rs.3,00,000/-

14. The compensation awarded under various heads is just and reasonable to meet the ends of justice. This point is answered in favour of the petitioners and against the respondents.

15. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.2,19,500/- to Rs.3,00,000/- in favour of petitioner Nos.1 and 2 with interest at 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of realisation. The Appeal against appellant Nos.3 to 5 is dismissed. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation to petitioner Nos.1 and 2. Petitioner Nos.1 and 2 are equally entitled to the enhanced compensation amount. There shall be no order as to costs in this appeal.

16. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.04.2018
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