

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

M.A.C.M.A. No. 3210 of 2014

Between:

P. Madhavi @ Swapna and 3 others

... Appellants

AND

1. N. Srinivas and 2 others

.... Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. No. 3210 of 2014**

% 29.01.2018

P. Madhavi @ Swapna and 3 others

.....Appellants

Versus

\$ 1. N. Srinivas and 2 others

..... Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Appellants : Sri Venkataiah Ediga

^ Counsel for the Respondents : Sri T. Mahendar Rao

? Cases referred

¹ 2013 LawSuit (SC) 924

² (2009) 6 SCC 121

³ 2017 SCC OnLine SC 1270



THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 3210 of 2014

JUDGMENT:

This appeal is arising out of the Order and Decree dated 22.02.2013, passed in O.P.No.735 of 2011 by the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District, granting compensation of Rs.4,34,000/- to the appellants-claimants, on account of the death of the deceased P. Sathish Kumar in a motor vehicle accident that occurred on 03.05.2011.

2. Brief facts of the case are that on 03.05.2011, while the deceased was proceeding on Hero Honda Motorcycle bearing No.AP-23M-3139 towards Cheryala side, and when he reached Ismailkhanpet village outskirts near Balaji Pipe Company, a tractor bearing number AP-9BS-8641 and trailer bearing number AP-23W-8055, driven by its driver in a rash and negligent manner came from Ganeshgadda side and dashed the motorcycle of the deceased. As a result, the deceased fell down from the motorcycle and sustained serious injuries leading to his instantaneous death. The P.S, Sanga Reddy, registered a case against the driver of the offending tractor-trailer in Crime No.120 of 2011 for the offence under Section 304A IPC. The appellants, who are the legal heirs of the deceased, filed claim petition O.P.No.735 of 2011 before the Tribunal claiming compensation of Rs.12,00,000/- from the respondents 1 and 2, who are the owner and insurer of the offending tractor-trailer, on account of the death of the deceased. The 3rd respondent- P.Rajeswar, is said to be the father of the deceased, but their relationship does not find place in the pleadings of the appellants. The respondents 1 and 3 have remained ex parte. The respondent No.2-insurance company has filed its counter, denying the allegations in the petition, and put the appellants to strict proof of the age and income of the deceased. They denied the accident and

also the factum of instantaneous death of the deceased in the accident. The insurance company has also denied the rash and negligent act on the part of the driver of the tractor-trailer. It is also contended that the offending vehicle was not insured with them and that if any policy is traced out, the appellants have to prove that the offending vehicle had not violated the terms and conditions of the policy. It is further contended that the drivers of both the collided vehicles are not having subsisting driving licenses at the time of the accident. It is further contended that the petition is not maintainable on the ground of non-joinder of the rider and owner of motorcycle as necessary parties. It is further contended that as per insurance policy, the date, time, place of accident, particulars of deceased, name of the driver and particulars of his driving license have to be furnished by the owner of the vehicle, but the same was not furnished in this case. It is contended that as per Section 158(6) of the Motor Vehicles Act, 1988, it is a statutory obligation on the concerned police officials to forward to the Claims Tribunal having jurisdiction, the information about the death or bodily injury to any person, and about the compliance with the statutory demand. It is further contended that the claim of the appellants is highly excessive and exorbitant and sought for dismissal of the petition.

3. The Tribunal, on consideration of the pleadings, framed three issues. The first being the proof of rash and negligent act on the part of the driver of the tractor-trailer, the second being the entitlement of the appellants for the compensation against respondents 1 and 2 and, the third is with regard to the relief claimed by the parties in the petition. The Tribunal, on consideration of the evidence of PWs.1 to 3, and considering the documents Ex.P1-C.C of FIR, Ex.P2-C.C of charge sheet, Ex.P3-C.C. of inquest report, Ex.P4-C.C of PME report, Ex.P5-C.C of PME report, Ex.P6-driving license of deceased, and Ex.B1-insurance policy, has partly allowed the original petition by

awarding compensation of Rs.4,34,000/- with interest at 7.5% per annum against respondents 1 and 2.

4. Aggrieved by quantum of compensation awarded by the Tribunal, the appellants-claimants preferred this appeal seeking enhancement of compensation.

5. Heard the arguments of the learned counsel for appellants-claimants, and the learned Standing Counsel for the 2nd respondent-insurance company.

6. Learned counsel for the appellants contended that the Tribunal has awarded inadequate compensation without considering the income of the deceased though there is evidence to that effect. It is contended that the evidence of PW3, employer of the deceased, and the documents Exs.P1 to P6 were not considered by the Tribunal in a proper perspective. It is contended that the deceased was a driver by profession, and Ex.P6 is the driving license of the deceased which clearly reveals that he had a driving license to drive a heavy motor vehicle, and that evidence coupled with the evidence of PW3 would prove that the deceased was earning Rs.9,000/- per month. It is further contended that the Tribunal has not considered the evidence of PW3, an independent witness, under whom the deceased was working as a driver prior to his death. The Tribunal has not considered the evidence of PW 3 in the light of the documents Exs.P1 to P6, of which Ex.P6 is the driving license of the deceased. Therefore, it is contended that the Tribunal ought to have taken the income of the deceased as Rs.9,000/- per month, instead of Rs.3,000/- per month.

7. Per contra, the learned Standing Counsel for the respondent-insurance company contended that as there is no authentic proof of the income of the deceased, like Income Tax Returns, the registers/records maintained by PW 3, and other documents which

are authentic to believe that he was paying salary to the deceased as driver working under him, the Tribunal has rightly taken the notional income of the deceased as Rs.3,000/-, and the same does not require any interference. It is also contended that mere filing of a driving license is not sufficient to come to a conclusion that the deceased was a driver by profession.

8. The contention raised by the appellants that the deceased was a driver by profession and earning Rs.9,000/- per month as a driver is a question of fact. In fact, the Tribunal has examined PW3 and marked Ex.A6 in this regard. PW3 is said to be the employer of the deceased and his testimony is that the deceased worked as a driver, and he was paying Rs.6,000/- per month, and Rs.100/- per day as Batta. Exhibit-P6 is the original of driving license of the deceased. Except producing the testimony of PW3, there is no supporting material filed to prove the fact that the deceased was driving the vehicle of PW3, and PW3 was paying salary to the deceased as stated by him. Therefore, the testimony of PW3 is an oral testimony, which can be secured very easily, for getting more compensation in an accident case like this. In the absence of any other documentary proof, the testimony of PW3 cannot be relied upon to come to a conclusion that the deceased was earning Rs.9,000/- per month. On the other hand, PW3 stated in his cross-examination that he has not filed any documents to show that the deceased worked under him as a driver and he was paying Rs.6,000/- per month towards salary to the deceased, besides Rs.100/- as daily Batta. This piece of cross-examination reveals that, except the oral testimony of PW3, there is no material on record to show that the deceased was working as a driver under him, and PW3 was paying Rs.6,000/- per month, besides batta of Rs.100/- per day. Apart from this evidence, the testimony of PW1 also reveals that she has stated in her cross-examination that she has not filed any documentary proof to show that the deceased was working as a driver. The testimony of PW1 in her cross-examination clearly reveals that there is no

documentary proof for the income of the deceased. Therefore, the income of the deceased can be assessed only notionally. It cannot be inferred that the deceased was a driver by profession merely on the testimony of PW1 and 3. Mere filing of driving license of the deceased does not lead to an inference that the deceased was a driver by profession unless there is some corroborative evidence to prove that fact. Therefore, the findings of the Tribunal in disbelieving the testimony of PW1 and PW3, with regard to the proof of income of the deceased and his occupation, does not require any interference.

9. The other contention raised by the learned counsel for the appellants is that the Tribunal ought to have taken the minimum wages for the year 2011 for assessing the income of the deceased. It is submitted that as per G.O.Ms.No.90, Labor, Employment, Training and Factories, dated 28.09.2007, the minimum wage was Rs.6,086/- and, therefore, sought for enhancement of compensation basing on the minimum wages as per the G.Os., referred above. The learned counsel for the insurance company has not disputed with regard to the G.O referred above. In the said G.O., the table shows the C.P.I.N.O.S and the rise to the link points for the purpose of calculation of cost of living allowance. The minimum wage between 01.04.2011 to 30.09.2011, the C.B.A was 835, and the rise was 310. The learned counsel for appellants calculated the rise and stated that the minimum wages during the relevant period was Rs.6,086/- and sought for enhancement of the compensation accordingly. However, in view of the foregoing discussion, since there is no material on record to come to a conclusion that the deceased was a driver by profession, the above G.O., cannot be made applicable to this case.

10. Learned counsel for the appellants placed reliance on **Sanobanu Nazirbhai Mirza & Others v. Ahmedabad Municipal**

Transport Service¹ and contended that the appellants are entitled for addition of 50% of salary of deceased towards loss of future prospects.

11. It is pertinent to note that the decision in **Sanobanu** relied upon by the learned counsel for appellants is a decision rendered in respect of a skilled labourer. In the instant case, there is no material on record to show that the deceased was a driver by profession and, hence, the deceased may not come under the category of a skilled labourer. In **Sanobanu** case, the deceased was a Polisher by profession. But in the instant case, there is no evidence on record to show that the deceased was a driver by profession and, therefore, his notional income was taken as Rs.3,000/- per month by the Tribunal. In fact, the Hon'ble Apex Court, in a catena of decisions, has held that in the absence of proof of income, for persons working as labourer in unorganized sector, the notional income in such cases can be taken into consideration as Rs.3,000/- per month, for the purpose of calculation of compensation. In the instant case, as there is no proof of income of the deceased, and there being no evidence that the deceased was a driver by profession, considering that the deceased was a labourer in an unorganized sector, the income of the deceased can be taken into consideration as Rs.3,000/- per month. Though the learned counsel for the insurance company placed reliance on **Sarla Verma v. Delhi Transport Corporation**², and contended that persons working in public undertakings, having fixed salary and income, and fixed wages, are only entitled for future prospects, and those working in private sector are not entitled for future prospects, however, in view of the judgment of the Hon'ble Apex Court in **National Insurance Company Limited v. Pranay Sethi**³, even self-employed and fixed income individuals are also entitled addition of income towards

¹ 2013 LawSuit (SC) 924

² (2009) 6 SCC 121

³ 2017 SCC OnLine SC 1270

future prospects, basing on the their age. Therefore, in view of **Pranay Sethi**, as the deceased was 25 years by the date of accident, 40% of his salary (notional income) can be taken into consideration towards future prospects. Therefore, considering his notional income as Rs.3,000/- per month, after adding future prospects at 40% of his notional income, the income of the deceased would come to Rs.4,200/- per month. The deceased had four dependents by the date of accident and, therefore, $1/4^{\text{th}}$ has to be deducted from his income towards personal expenses. And, therefore, after deducting $1/4^{\text{th}}$, the contribution of the deceased towards his family would come to Rs.2,950/- per month. As per **Sarla Verma**, the multiplier applicable to the age of the deceased is '18'. Therefore, applying multiplier '18', the compensation towards loss of dependency would come to $\text{Rs.}2,950 \times 12 \times 18 = \text{Rs.}6,37,200/-$. Further, in view of the judgment in **Pranay Sethi**, the appellants are entitled to a sum of Rs.70,000/- towards loss of consortium, loss of estate and funeral expenses. Therefore, the appellants are entitled to a total compensation of Rs.7,07,200/- with interest at 7.5% per annum from the date of petition till realization against respondents 1 and 2.

11. **IN THE RESULT**, the appeal is partly allowed, by awarding compensation of Rs.7,07,200/- with interest at 7.5% per annum from the date of petition till realization. The respondents 1 and 2 are directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are permitted to withdraw their respective shares as apportioned by the Tribunal. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

29th January, 2018

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THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 3210 of 2014

29th January, 2018

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