

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.279 OF 2006

JUDGMENT:

This appeal is preferred by the petitioners in O.P.No.37 of 2000 on the file of the Prl.District Judge, (MACT), Medat at Sangareddy (for short, 'the Tribunal'), dissatisfied with the award dated 11.03.2003 granting a sum of Rs.1,22,720/- towards compensation as against Rs.2,50,000/- claimed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellants herein are the petitioners before the Tribunal, while the respondent Nos.1 and 2, are the driver and insurer of the LML Vespa bearing No.AP 9J 4262, respectively.

3. The fact-situation occurring in the instant case is that on 09.03.1999 when the deceased and his mother Bismilla Bee while going on the scooter from Koheer to Magdoompally Village, while his scooter comes within the limits of Kaveli Village, one scooter bearing No.AP 9J 4262 comes from opposite direction on Kaveli X road to Koheer in a rash and negligent manner and dashed to the scooter of the deceased, due to which the deceased and his mother fell down on the road and both were received fractures and multiple injuries on their bodies, and they were unconscious after the accident, and deceased Mohd.Kadeer and his mother shifted

to Government Hospital, Zaheerabad and thereafter the deceased referred to Nizam Orthopaedic Hospital, Hyderabad and he died on 15.03.1999 at Nizam Orthopaedic Hospital while undergoing treatment. The Police Koheer registered a case in Cr.No.25/99, under Section 337 IPC and altered the section of law into 304 A of IPC which is pending before JFCM, Zaheerabad against the driver of LML Vespa bearing No.AP 9J 4262. The accident occurred due to the rash and negligent driving of driver of the LML Vespa bearing No.AP 9J 4262. The deceased was aged about 22 years, he was hale and healthy and was earning Rs.3,500/- per month by doing Electrical and Air conditioner Mechanic work, at the time of accident. The deceased is only earning member in the family, due to accident the entire family suffered for their livelihood. As such, the petitioners are claiming in all a sum of Rs.2,50,000/- as compensation as against the respondents.

4. The respondent No.1 is the owner of LML Vespa No.AP 9J 4262 and the 2nd respondent is the insurer of the said vehicle.

5. The 1st respondent filed counter denying the negligence on the part of the 1st respondent and alleging that the deceased himself drove his scooter in a rash and negligent manner, thus contributed for the accident, as such, the petitioners are not entitled to claim any compensation from the respondents. As the accident occurred only due to rash

and negligent driving of the deceased by his scooter, the owner and insurance company of the vehicle of the deceased are also necessary parties to the claim petition. Hence the claim is liable to be dismissed for non-joinder of necessary parties. It is also further contended that the compensation claimed by the petitioners is excessive. They required the petitioners to prove the age, occupation and income of the deceased.

6. The 2nd respondent also filed counter denying the material allegations made in the claim petition and made the petitioners to strict proof of the same. They also denied the occurrence and manner of the accident and also age, income and occupation of the petitioners. This respondent did not admit that the petitioners are the sole legal heirs to claim and they are fully depending upon the deceased at the time of accident. They also contended that the quantum of compensation claimed is highly excessive and sought for dismissal of the petition.

7. Basing on the pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry before the Tribunal, the 1st petitioner who is the father of the deceased was examined as PW1 and one Aizaz Ahmed who is an eye witness to the accident was examined as PW2 and Exs.A1 to A5 are marked on behalf of the petitioners. But, the respondents did not choose to adduce

any oral evidence, but got marked Ex.B1-copy of the Insurance policy.

8. The Tribunal, on appraisal of evidence on record, and relying on the oral evidence of PWs1 and 2 and documentary evidence, Exs.A1-Copy of FIR, A2- copy of charge sheet, A3-copy of PME report, A4-prescriptions, A5-Medical Bills and cash receipt, and in the absence of any contra evidence produced by the respondents, tendered the finding on issue No.1 and 2, in favour of the petitioners.

9. On issue No.3, the Tribunal has taken the income of the deceased at Rs.900/- per month which comes to Rs.10,800/- per annum and out of which by deducting 1/3rd of the income towards personal expenditure arrived at a net contribution of the deceased to the family at Rs.7,200/- per annum and thus assessed the loss of estate at Rs.75,240/- by applying relevant multiplier as 10.45 as per the Judgment in case of *Bhagwan Das v. Mohd.Arif* reported in 1987(2) ALT 137. In addition to that the Tribunal granted Rs.5,000/- towards funeral expenses, Rs.5,000/- to the 2nd petitioner towards love and affection and Rs.37,480/- towards medical expenses, and thereby awarded a total amount of compensation at Rs.1,22,720/- with interest @ 9% per annum from the date of petition till the date of realization against respondents 1 and 2.

10. Dissatisfied with the award of compensation granted by the Tribunal, the petitioners, who are the father and sister of the deceased, preferred the instant appeal impugning the award seeking for enhancement of compensation with interest there on and costs.

11. Heard both sides.

12. In this case it is to be seen that the trial Court basing on the evidence of PW2 who is an eye witness and by relying on the documents i.e. Exs.A1 to A5 held that the accident has occurred due to the rash and negligent driving of the 1st respondent which finding tendered by the Tribunal, cannot be interfered with, as it is claimants appeal for enhancement of compensation and that no appeal is filed by respondents against the said finding.

13. Now, the short point that arises for consideration is, whether the petitioner is entitled to enhancement of compensation ?

14. Learned counsel for the appellants submits that as per Judgment in **Sarla Verma and others v. Delhi Transport Corporation and another** ¹ since the deceased is aged 23 years the multiplier that has to be adopted is '18', but the Tribunal erred in applying '10.45' as multiplier. She also submits that the mother of the deceased was also passed

¹ 2009 (4) SCJ 91 = 2009 (6) SCC 121

away in the same accident and her income was also taken as Rs.900/- by the Tribunal in another claim petition like that of the deceased in this case. But, in the appeal preferred by the claimants therein in MACMA No.222/2006, the income of the deceased mother was taken as Rs.3,000/- though she was stated to be house wife, as such, the income of the deceased also should be taken at least more than Rs.3,000/- since the deceased is aged 23 years. She also submits that as per the Judgment reported in ***Shiv Kumar M v. Managing Director, Bengaluru Metropolitan Transport Corporation***² the total conventional sum should be granted as Rs.70,000/-, but the Court below granted only Rs.10,000/- towards funeral expenses and loss of love and affection.

15. On the other hand learned counsel appearing for the 2nd respondent did not dispute the assertion of the learned counsel for the appellants with regard to multiplier. She submits that as there is no documentary proof to show that the deceased was earning income, the Tribunal has rightly taken the income of the deceased as Rs.900/- per month.

16. Admittedly, as per the Judgment rendered by the Supreme Court in ***Sarla Verma's case (supra)***, the multiplier that has to be adopted to the persons aged 23 years is '18'. In the appeal preferred by the claimants in CMA No.222/2006 wherein the income of the mother of the

² 2017 (5) SCC 79

deceased was taken as Rs.3,000/- though she is stated to be house wife, this Court feels that the income of the deceased can be taken as Rs.3,000/- as he is aged 23 years. Hence, the annual income of the deceased comes to Rs.36,000/- (3000x12) out of which after deducting 1/3rd of the income towards personal expenses it comes to Rs.24,000/- which is stated to be the income contributed by the deceased to the family and by applying the legal principles laid down in the case of **Sarala Verma (supra)** the multiplier of '18' can be applied. Thus, Rs. 4,32,000/- (24,000 x 18) can be granted to the petitioners under the head of loss of income and Rs.70,000/- towards conventional heads i.e. loss of love and affection, funeral expenses, last rites etc as per the Judgment in **Shiv Kumar M case (supra)**. Thus, in total the petitioners are entitled to a sum of Rs.5,02,000/- towards compensation.

17. The petitioners are entitled to interest on the compensation of Rs.1,22,720/- awarded by the Tribunal, at 9% per annum, and on the enhanced compensation of Rs.3,79,280/- at 7.5% per annum, from the date of petition till realisation, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**³.

18. Though the claimants claimed only Rs.2,50,000/-, as per the Judgment relied on by the petitioners in **Adam Indur**

³ 2013ACJ1403 = 2013(4)ALT35

Muttemma and others v. Rathod Reddia and others ⁴

there is no bar in granting just compensation in excess of the claim made by the petitioners subject to payment of court fee on the additional amount granted.

19. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned award is modified enhancing the compensation, as stated supra. There shall be no order as to costs. The claimants have to pay the deficit Court fee or the Tribunal may deduct the amount required for the purpose of Court fee from the amount awarded to the petitioners after respondents Insurance Company deposits the amount.

As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.



A.RAJASHEKER REDDY, J

02.02.2018
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⁴ 2015 (4) ALT 775 (L.B)