

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**M.A.C.M.A. No.1024 OF 2006**

**JUDGMENT:**

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellants/petitioners challenging the judgment and award, dated 06.03.2006 passed in O.P.No.351 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Warangal (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 22.07.2004 at about 6:45 PM, one V.Indra Reddy (hereinafter referred to as 'the deceased') was proceeding in the jeep bearing No.AP 36 V 7403 to Anandapuram Village. When the jeep reached outskirts of Katakshapuram Village, the driver of the jeep bearing No.AP 15 V 3102 had driven the same in a rash and negligent manner and dashed against the jeep bearing No.AP 36 V 7403. Due to accident, the deceased died on the spot. The Station House Officer, Atmakur Police Station, registered a case in Crime No.116 of 2004 for the offences punishable under Sections 279, 337, 338 and 304A I.P.C. against the driver of the jeep bearing No.AP 15 V 3102. By the time of death, the deceased was aged about 28 years and used to earn an amount of Rs.3,000/- per month by attending agricultural work. The first respondent is the

owner of the jeep bearing No.AP 15 V 3102, which was insured with the second respondent company and third respondent is the Branch Manager of second respondent company. Petitioner No.1 is the wife and petitioner Nos.2 and 3 are children of the deceased. The petitioners are dependants on the income of the deceased. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.4,00,000/- with interest to the petitioners.

4. Respondent Nos.1 and 3 remained *ex parte*. The second respondent filed counter denying all the averments made in the petition including the age and income of the deceased. The first respondent did not inform the factum of accident to this respondent. The driver of the first respondent was not having valid driving licence; therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. There is a delay in lodging the complaint. Hence, the petition is liable to be dismissed.

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

- (1) Whether the accident took place due to rash and negligent driving of Jeep bearing No.AP-15V/3102, by its driver?
- (2) Whether the petitioners are entitled for compensation, if so, what amount and from whom?
- (3) To what relief?

6. During the course of enquiry, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.8, and Ex.X1 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 jeep bearing No.AP-15V 3102, which resulted in the death of the deceased and awarded compensation of Rs.2,49,646/- to the petitioners with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

8. Feeling aggrieved by the judgment and award of the Tribunal, the claimants preferred the present appeal.

9. Learned counsel for the petitioners-appellants strenuously submitted that the Tribunal has not considered the oral testimony of PW.3 and recitals of Ex.A.7 identity card while assessing the income of the deceased. He further submitted that even by attending coolie work one may earn not less than an amount of Rs.3,000/- per month. He further submitted that the Tribunal granted meagre amount under the heads of loss of estate and loss of consortium. He also submitted that the amount of compensation awarded by the Tribunal is not just and reasonable; therefore, it is a fit case to allow the appeal.

10. *Per contra*, Sri N.S.Bhaskar, the learned counsel for respondent Nos.2 and 3, strenuously submitted that the oral testimony of PW.3 and Ex.A.7 are no way helpful to the petitioners to prove the income of the deceased. He further submitted that the Tribunal rightly considered the oral and documentary evidence and awarded just and reasonable compensation to the petitioners. He also submitted that the petitioners have not produced any

document to prove the income of the deceased; therefore, it is a fit case to dismiss the appeal.

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 jeep bearing No.AP 15 V 3102? and
2. Whether the compensation awarded by the Tribunal is just and reasonable?

**POINT No.1**

12. As seen from the testimony of PW.2, on the date of accident, he was travelling in the jeep bearing No.AP 36 V 7403 along with the deceased. His testimony further reveals that when the jeep reached Katakshapuram Village, the driver of the jeep bearing No.AP 15 V 3102 had driven the same in a rash and negligent manner and dashed against the jeep bearing No.AP 36 V 7403. Due to accident, the deceased sustained injuries on various parts of the body and died on the spot. In the cross-examination of PW.2, nothing was elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Ex.A.1 F.I.R. and Ex.A.4 charge sheet, the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP 15 V 3102. As per the recitals of Ex.A.2 post-mortem report and Ex.A.3 inquest panchanama, the deceased died due to injuries sustained in a road accident. Basing on the oral and documentary evidence 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 jeep bearing No.AP 15 V 3102. I am fully agreeing

with the finding recorded by the Tribunal. The finding recorded by the Tribunal became final in view of non-filing of the appeal by the respondents. This point is answered in favour of the petitioners and against the respondents.

**POINT No.2**

13. As per the recitals of Ex.A.2 post-mortem report and Ex.A.3 inquest panchanama, the deceased was aged about 28 years. The Tribunal has taken the multiplier as '18'. As rightly pointed out by the learned counsel for respondent Nos.2 and 3, the appropriate multiplier to be taken for the age of '28' years is '17' in view of the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and another**<sup>1</sup>. The Tribunal committed error while taking the multiplier as '18' instead of '17'. The Tribunal has taken the income of the deceased as Rs.1500/- per month. As seen from the testimony of PW.1, the deceased owned an extent of Ac.3.22 guntas of land. As per the testimony of PW.3, the deceased was working as a hamali. Ex.A.7 is the identity card of deceased. The material available on record reveals that the deceased used to attend agricultural as well as hamali work. Even in the year 2004 one may earn minimum Rs.80/- per day even by attending coolie work. The deceased may earn an amount of Rs.2400/- per month. Out of the same, 1/3<sup>rd</sup> shall be deducted towards his personal expenses. The deceased may contribute Rs.1600/- per month (2400-800) to his family members. The loss of dependency comes to Rs.3,26,400/- (1600 x 12 x 17). The Tribunal awarded an amount of Rs.2,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.15,000/-

---

<sup>1</sup> (2009) 6 SCC 121

towards loss of consortium. At this stage, the learned counsel for the appellants has drawn the attention of this Court to **National Insurance Company Ltd. Vs. Pranay Sethi and others**<sup>2</sup>, wherein paragraph No.61 (viii) reads as follows:

“61 (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

14. As per the principle enunciated in the case cited supra, the legal representatives of deceased are entitled for Rs.70,000/- for loss of consortium, funeral expenses and loss of estate. Hence, this Court is inclined to grant an amount of Rs.70,000/- towards loss of consortium, loss of estate and funeral expenses.

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

Loss of dependency: Rs.3,26,400/-

Loss of consortium, loss of estate and funeral expenses: Rs. 70,000/-

Total: Rs.3,96,400/-

15. Therefore, I am of the considered view that the compensation awarded under various heads is just and reasonable to meet the ends of justice. The Tribunal awarded interest at the rate of 7.5% per annum. The interest awarded by the Tribunal is just and reasonable. This point is answered in favour of the petitioners and against the respondents.

---

<sup>2</sup> AIR 2017 SC 5157

16. In the result, the Appeal is allowed by enhancing the quantum of compensation from Rs.2,49,646/- to Rs.3,96,400/- with interest at 7.5% per annum from the date of petition till the date of realisation. Respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners. Petitioner Nos.1 to 3 are equally entitled to the enhanced compensation amount i.e., Rs.48,918/- each. There shall be no order as to costs in this appeal.

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

**T.SUNIL CHOWDARY, J**

Date: 02.04.2018  
Ivd

