

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.1657 OF 2008 & 2614 OF 2018

COMMON JUDGMENT:

Since the facts of the case, issues involved and the parties in both the appeals are one and the same, both the appeals are being disposed of by way of this common judgment.

2. Challenging the order, dated 23.12.2006, passed in O.P.No.365 of 2004 by the learned Chairman, Motor Accident Claims Tribunal – cum – Chief Judge, City Civil Court, Hyderabad (for short, “the Tribunal”), the National Insurance Company Limited preferred M.A.C.M.A.No.1657 of 2008 seeking to set aside the said award, and the claimants therein preferred M.A.C.M.A.No.2614 of 2018 seeking enhancement of compensation.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal.

4. Heard the learned counsel for both sides and perused the record.

5. Learned Standing Counsel for the National Insurance Company Limited appearing for respondent No.3 would contend that the deceased Shaik Ismail did not die due to the injuries sustained by him in the road accident that occurred on 21.12.2003 due to the rash and negligent driving of the driver of auto bearing No.AP 24U 3552 and there is no medical record to substantiate that the death of the deceased Shaik Ismail was due to the injuries

suffered by him on 21.12.2003 and no Doctor was examined to prove the same; that the Tribunal granted excessive compensation on different counts; that the date of accident was 21.12.2003 and the subject death occurred on 07.03.2005 i.e., one year three months after the occurrence of the accident and so, the subject death has no nexus with the injuries suffered by the deceased Shaik Ismail and ultimately, prayed to reduce the compensation.

6. On the other hand, learned counsel for the claimants would contend that as against the claim of Rs.6,00,000/-, the Tribunal granted a total compensation of Rs.2,09,400/- with interest at the rate of 6% per annum from the date of petition till deposit and costs pro-rata, which is meagre; that the deceased Shaik Ismail suffered grievous injuries in the subject accident and his total body was paralysed and he could not move from the bed, and after one year 3 months, he died due to the injuries suffered in the subject accident and there is no other cause for his death; that the deceased Shaik Ismail was a stone cutter and was earning Rs.7,500/- per month, but the Tribunal held that the deceased Shaik Ismail suffered injuries and there is no nexus between the death and the injuries and granted only meagre compensation on different heads and ultimately, prayed to hold that the deceased Shaik Ismail died due to the accidental injuries suffered in the subject accident and grant Rs.6,00,000/- as claimed.

7. In view of the submissions made by both sides, the following points come up for determination:

“1. Whether the deceased Shaik Ismail died due to the injuries suffered in the road accident that occurred on 21.12.2003?

2. Whether petitioner Nos.2 to 5 and respondent No.4 are entitled for enhancement of compensation as prayed? and

3. Whether the impugned award passed by the Tribunal is liable to be set aside?”

8. **POINT No.1:-**

Petitioner No.2, who is the wife of the deceased Shaik Ismail, was examined as P.W.1. She deposed that her husband suffered grievous injuries and died due to those injuries only and that there is no other cause for his death. Through her, Exs.A-1 to A-14 were marked. Ex.A-1 is the certified copy of F.I.R. Ex.A-2 is the certified copy of charge sheet. Ex.A-3 is the certified copy of wound certificate. Ex.A-4 is the certificate issued by the Station House Officer, Saroornagar Police Station. Ex.A-5 is the Death Certificate. Ex.A-6 is the Discharge Summary. Ex.A-7 is the Discharge Summary issued by Srirama Hospital. Ex.A-8 is the bunch of medical bills. Ex.A-9 is the bunch of medical reports. Ex.A-10 is another set of medical bills. Ex.A-11 is the positive and negative photographs. Ex.A-12 is the school certificate of petitioners 3 and 4. Ex.A-13 is the attested copy of inquest report. Ex.A-14 is the attested copy of Post mortem report.

9. While dealing with the subject matter of the O.P., the Tribunal held that the deceased Shaik Ismail suffered fracture of the spinal cord, fracture of the head and fracture of both the legs, apart from other injuries. The same is exhibited in Ex.A-3 – certified copy of wound certificate of the deceased Shaik Ismail. Under Ex.A-3, there is specific mention that the deceased Shaik Ismail was unable to move both lower limbs. There is also ample medical record to believe that the deceased Shaik Ismail could not

move his lower limbs due to the injuries caused to the spinal cord. Ex.A-3 was issued by Osmania General Hospital wherein the deceased Shaik Ismail was admitted on 22.12.2003 and discharged on 02.01.2004. He was inpatient for ten days in the said hospital. As per Ex.A-7 – Discharge Summary issued by Srirama Hospital, dated 16.01.2004, the deceased Shaik Ismail underwent operation at Srirama Orthopeadic Hospital and Trauma Care Centre, Nalgonda and took treatment between 16.01.2004 to 06.02.2004 for twenty days. Admittedly, petitioner Nos.2 to 5 and respondent No.4 have not examined any other person including Doctor to believe that the death of the deceased Shaik Ismail was due to the accidental injuries. Ex.A-14 is the Post Mortem report of the deceased Shaik Ismail wherein there is a specific mention that the cause of the death of the deceased Shaik Ismail was due to chronic infection. In Ex.A-14, there is mention of the injuries suffered by the deceased Shaik Ismail. Ex.A-13 is the Inquest Panchanama of the deceased Shaik Ismail wherein it is mentioned that the death of the deceased Shaik Ismail was the result of accidental injuries. Ex.A-6 is the Discharge Summary issued by Osmania General Hospital wherein the details of treatment given are shown. Under Ex.A-7 also, there is mention of the injuries suffered by the deceased Shaik Ismail as indicated above. There is also other material on record to show the injuries and the treatment taken by him till his death, which occurred on 07.03.2005. Under Ex.A-9 – bunch of medical reports, dated 24.01.2004, also, there is mention about the injuries and damage caused to the soft tissues at D11 and D12 and there is a specific mention with regard to the state of the deceased Shaik Ismail as follows:-

***“IMPRESSION : MR Image Morphology is suggestive of
*Post traumatic fracture, wedge compression, retropulsion of
fracture at D11 vertebra with epidural, pre and paraspinal
hematoma, cord/* D12 vertebral body contusion.”***

Ex.A-7 reveals that the deceased Shaik Ismail was examined by Dr.L.Raji Reddy, Consultant Orthopaedic Surgeon, Nalgonda wherein there is a specific mention of the injuries to D11 apart from other injuries and there is no sign of recovery from the injuries from the date of accident. There is also other ample evidence on record that the deceased Shaik Ismail did not recover from the accidental injuries. The proceedings before the Tribunal are summary in nature. No strict proof is required to prove the accidental claim. In view of the oral evidence and the ample documentary evidence placed on record, it can be safely concluded that had the deceased Shaik Ismail not suffered injuries in the subject road accident, he would not have died. There is a specific mention with regard to the damage to the lower limbs, vertebra etc., and it establishes that the deceased Shaik Ismail died due to the accidental injuries. The Tribunal did not take into account the medical evidence. When there is ample medical evidence on record coupled with the oral evidence of P.W.1, the Tribunal is not justified in holding that the subject death was not the result of the accidental injuries. Point No.1 is answered in favour of petitioner Nos.2 to 5 and respondent No.4.

10. **POINT Nos.2 & 3:-** As per the evidence of P.W.1, the deceased Shaik Ismail was a stone cutter and earning Rs.7,500/- per month. The date of occurrence of the accident is 21.12.2003. The earning capabilities in those days are required to be taken into

consideration to assess and award the compensation. There is ample evidence to hold that the deceased Shaik Ismail was 30 years old at the time of the accident. It can be held that he was an earning member and petitioner Nos.2 to 5 and respondent No.4 are his dependants. It is further held that the deceased Shaik Ismail was a stone cutter and his monthly income was Rs.3,000/-. As he was a stone cutter, some hike is required to be taken into consideration. So, it can be taken as Rs.3,500/- per month. Since there are five dependants to the deceased Shaik Ismail, 1/4th of the income i.e., Rs.875/- is liable to be deducted towards his personal expenses and 3/4th of his income i.e., Rs.2,625/- is required to be taken into consideration to assess contribution to petitioner Nos.2 to 5 and respondent No.4. So, the loss of dependency caused to petitioner Nos.2 to 5 and respondent No.4 comes to Rs.2,625/- x 12 = Rs.31,500/- per annum. The suitable multiplier for the age of 30 years is "17". By applying the multiplier "17", the loss of dependency caused to petitioner Nos.2 to 5 and respondent No.4 comes to Rs.5,35,500/- (i.e., Rs.31,500/- x 17).

11. It is apt to refer to the recent decision of the Apex Court in **National Insurance Co. Ltd., Vs. Pranay Sethi and others**¹, wherein, it was held as follows:-

"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."

Taking into consideration the aforementioned decision of the Apex Court, this Court is inclined to grant Rs.40,000/- to petitioner

¹ 2017 (6) ALD 170 (SC)

No.2/wife of the deceased Shaik Ismail towards loss of consortium, Rs.15,000/- towards loss of estate and another Rs.15,000/- towards funeral expenses to petitioner Nos.2 to 5 and respondent No.4. In all, petitioner Nos.2 to 5 and respondent No.4 are entitled for a compensation of Rs.6,05,500/- (i.e., Rs.5,35,500/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-) and the same is restricted to Rs.6,00,000/- as claimed.

12. Accordingly, M.A.C.M.A.No.1657 of 2008 is dismissed and M.A.C.M.A.No.2614 of 2018 is allowed modifying the order, dated 23.12.2006, passed in O.P.No.365 of 2004 by the Tribunal i.e., enhancing the compensation from Rs.2,09,400/- to Rs.6,00,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of realisation. On deposit of the compensation, petitioner No.2, who is the wife of the deceased Shaik Ismail, is entitled for half of the enhanced compensation including the interest thereon. Petitioner Nos.3 to 5 and respondent No.4, who are the son, two daughters and mother of the deceased Shaik Ismail, are entitled to share the remaining half of the enhanced compensation including the interest thereon, equally. On deposit of the compensation, petitioner Nos.2 to 5 and respondent No.4 are permitted to withdraw their respective shares along with the accrued interest thereon. There shall be no order as to costs.

13. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 07.09.2018
AMD

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



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AMD