

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT. JUSTICE T.RAJANI**

M.A.C.M.A.No.4353 OF 2008

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Aggrieved by the decree and award, dated 24.03.2008, passed in O.P.No.279 of 2006 by the Chairman, Motor Accident Claims Tribunal – cum – III Additional Chief Judge, City Civil Court, Hyderabad, the present appeal came to be filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation.

2. The appellants are petitioners, whereas the respondents are respondents in the O.P. before the Tribunal.

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

4. Originally, the claim petition under Section 163-A of the Act came to be filed by the petitioners/claimants seeking compensation of Rs.30,00,000/- on account of death of one K.V.C. Surya Dhana Raj, who is the husband of petitioner No.1, father of petitioner No.2 and son of petitioner Nos.3 and 4, in a road accident. As per the averments in the claim petition, the deceased was aged about 27 years and working as a Processing Assistant in G.E. Capital International Services, Madhapur, earning Rs.10,000/- per month as on the date of accident. On 08.09.2005, while the deceased was proceeding on his two wheeler, a Maruthi Zen Car bearing No.AP-9-AN-1999 driven by

its driver in a rash and negligent manner, hit the two wheeler of the deceased, as a result of which, the deceased fell down, sustained fatal injuries and breath his last. Respondent No.1 is the owner, while respondent No.2 is the driver of the maruthi car. Respondent No.3 is the insurer of the maruthi car. Hence, the petitioners pleaded that all the respondents are jointly and severally liable to pay compensation to the petitioners.

5. Respondent Nos.1 and 2 filed counter denying negligence on the part of respondent No.2. It was contended that the deceased was negligent in driving the two wheeler and contributed for the occurrence.

6. Respondent No.3 – insurer filed separate counter taking similar pleas. It was also urged that respondent No.2 and the deceased were not having valid driving licence and that the deceased was not an employee of G.E. Services.

7. Based on the above pleadings, the Tribunal framed the following issues:

“1) Whether the death of Mr. Surya Dhana Raj is caused on 08-09-2005 due to rash and negligent driving of Car No.AP 9AN 1999?

2) Whether the claimants are entitled to any compensation? If so against whom?

3) To what relief?”

8. During the course of enquiry, the claimants examined PWs.1 to 3 and got marked Exs.A1 to A7. On behalf of the respondents, RW.1 was examined and Ex.B1 was marked.

9. After analyzing the evidence available on record, the Tribunal, taking the income of the deceased at Rs.5,000/- per month, deducting 1/3rd therefrom towards his personal living expenses and applying the structured formula in Second Schedule to Section 163-A of the Act, taking Rs.22,000/- towards non-pecuniary damages, arrived at a sum of Rs.7,02,000/- towards total compensation. But, however, holding that there was contributory negligence to the extent of 50% on the part of the deceased, awarded a sum of Rs.3,51,000/- as compensation to the petitioners with interest at 7.5% per annum from the date of petition till the date of realization and apportioned the same in the ratio of Rs.1,00,000/- to petitioner No.1, Rs.1,50,000/- to petitioner No.2 and Rs.50,500/- each to petitioner Nos.3 and 4 with proportionate costs and interest. Challenging the same, the present appeal came to be filed.

10. Learned counsel for the appellants - petitioners mainly submits that the finding of the Tribunal in holding that there was contributory negligence on the part of deceased cannot be accepted. He further submits that merely because there is 'Head on Collision', the same by itself does not lead to an inference

that there was negligence by the rider of the motorcycle i.e., the deceased. He further submits that the Tribunal erred in deducting 1/3rd from the income of the deceased towards his personal living expenses, as the number of dependants depending on the deceased are more than three. He further submits that the Tribunal failed to take into consideration the future prospects and that the amounts awarded under conventional heads are also on the lower side.

11. On the other hand, learned counsel for respondent No.3 submits that there is absolutely no evidence to show that the accident occurred due to the rash and negligent driving by the driver of the maruthi car, since no charge sheet or any document is filed to show that there was negligence on the part of driver of the maruthi car. He further submits that the finding of the Tribunal in fixing the liability on the rider of the two wheeler and driver of the maruthi car warrants no interference. He further submits that there is absolutely no material to show the income of the deceased and therefore, the Tribunal was justified in fixing the income of the deceased at Rs.5,000/- per month. He further submits that since the father of the deceased i.e., petitioner No.3 was an earning member getting pension, the Tribunal was right in deducting 1/3rd towards the personal living expenses of the deceased, while calculating the compensation.

12. Having regard to the submissions, the points that arise for consideration are:

1. Whether the petitioners are entitled to enhancement of compensation?
2. Whether the Tribunal was justified in holding that the rider of the two wheeler and the driver of the maruthi car are responsible for the accident?
3. Whether the compensation of Rs.3,51,000/- awarded by the Tribunal is just and proper?

13. It is to be noted here that this is an appeal filed by the petitioners/claimants questioning the quantum of compensation and also the finding of the Tribunal with regard to the contributory negligence. The factors which weighed with the Tribunal in holding that the rider of the two wheeler was also responsible for the accident, was that no document relating to registration of crime came to be filed before the Tribunal. In the absence of the same, the Tribunal held that there was 'Head on Collision' and the deceased and respondent No.2 responsible for the accident. But, at the time when the appeal is taken up for hearing, learned counsel for the appellants – petitioners placed on record the Remand Case Diary to show that the driver of the maruthi car was alone held responsible for the accident, which is said to have taken place during the intervening night of 07/08.09.2005 at about 00:10 hours. Further, a perusal of the Remand Case Diary would also show that a case in crime No.538 of 2005 for the offence punishable under Section 304(A)

I.P.C. read with Section 119/117 of the Act came to be registered at Saifabad Police station against respondent No.2.

14. It is no doubt true that the documents, namely Remand Case Diary and the Postmortem Examination Report were not filed during the course of trial to show that the driver of the maruti car was responsible for the accident, but the petitioners examined PW.3, an eye-witness to the incident. PW.3, in his evidence, categorically deposed about the manner in which the accident had taken place. A reading of the evidence of PW.3 would show that as on the date of accident, while he was returning home and when he reached near Lumbini Park, Opposite Secretariat, at about 600 to 800 feet distance ahead of him, he noticed the incident, which took place due to the rash and negligent driving by the driver of the maruthi zen car bearing No.AP-9-AN-1999, which was coming in wrong route in opposite direction driven with high speed and hit the two wheeler, as a result of which, the motorcyclist fell down, received injuries and died on the spot. He identified the deceased as an employee of G.E. Institution and informed about the same to G.E. Institution, as well as to the father of the deceased. Though PW.3 was subjected to cross-examination, nothing useful was elicited to discredit his testimony. Further, PW.3 admitted in his cross-examination that it was a case of 'Head on Collision' and there was a road divider. If there was a road divider, in normal circumstances, the head on collision

would take place when one of the vehicle comes in wrong direction. It will be useful to extract the relevant portion in the cross-examination of PW.3, which is as under:

“I was travelling at about 40 to 50 Kms. speed. The deceased motor cycle was in front of me. The deceased motor cycle was travelling 600 to 800 feet distance. The accident is an head on collision. There is a road divider. It is not true to suggest that the deceased motor cycle came in opposite direction and hit maruthi car and there is no rash & negligence on the part of the driver of the maruti car.”

15. From the evidence referred to above, it is clear that there was no rash and negligence on the part of the rider of the motor cycle, but it was the driver of the maruthi car, who has driven the maruthi car not only at high speed but was coming in a wrong direction. In view of the evidence referred to above, coupled with the registration of a crime against the driver of the maruthi car, we feel that the finding of the Tribunal that there was negligence to the extent of 50% on the part of the rider of the scooter i.e., the deceased cannot be accepted. Accordingly, the said finding of the Tribunal in holding that there was 50% contributory negligence on the part of the deceased is set aside.

16. Coming to the quantum of compensation, the petitioners placed on record Ex.A4 – the original Appointment Letter, showing the income of the deceased at Rs.10,000/- per month, but could not prove the said letter by examining the

person, who issued it or any representative of the company. Therefore, the Tribunal fixed the salary of the deceased at Rs.5,000/- per month. But, having regard to the nature of the employment undertaken by the deceased at the time of accident and since there is no rationale for the Tribunal to fix the income of the deceased at Rs.5,000/- per month, we feel that the income of the deceased can be fixed at Rs.7,500/- per month, as even a daily wage labourer would earn Rs.200/- per day. Hence, the income of the deceased is fixed at Rs.7,500/- per month.

17. Since the deceased was aged about 27 years at the time of accident and in view of the judgment of the Honourable Apex Court in **National Insurance Co. Ltd., Vs. Pranay Sethi and others¹**, the future prospects shall be taken at 40% of the income of the deceased i.e., Rs.3,000/- per month (Rs.7,500/- per month x 40%). Hence, the income of the deceased works out to Rs.10,500/- per month (Rs.7,500/- + Rs.3,000) or Rs.1,26,000/- per annum.

18. At this stage, a dispute is raised by the learned Standing Counsel appearing for the Insurance Company that since PW.2 was a pensioner, the Tribunal has rightly deducted 1/3rd of the income of the deceased towards the personal living expenses of the deceased. But, the same is disputed by the

¹ 2017 (6) ALD 170 (SC)

learned counsel for appellants contending that there is no evidence on record to show that PW.2 was drawing any pension.

19. It is to be noted that father of the deceased was examined as PW.2. One P. Kavitha, Advocate, was appointed as an Advocate Commissioner to cross-examine PW.2 and pursuant to the same, she visited the house of father of the deceased, who was aged about 60 years, for recording the cross-examination. In the cross-examination, PW.2 admitted that he is not an eye-witness to the incident and as such, he cannot say as to whether the deceased was negligent. He further stated that he worked at Central Ware Housing Corporation prior to his retirement and that he is not a pensioner and there is no provision for pension in the Department. He further states that his son was working at G.E. Capital from April, 2005. In respect of the other suggestions given, namely with regard to the manner in which the accident took place, as to the driving licence of respondent No.2 etc., are all denied.

20. From the evidence of PW.2 referred to above, it is clear that PW.2 retired from service and that he was not a pensioner and there was no provision for pension in the Department from where he retired. Therefore, the argument of the learned counsel for appellants – petitioners that 1/4th of the income of the deceased has to be deducted towards his personal living expenses, since the dependants are more than three in number,

has to be accepted. If $1/4^{\text{th}}$ is deducted from the earnings of the deceased, the contribution of the deceased to the family works out to Rs.94,500/- per annum (Rs.1,26,000/- - $1/4^{\text{th}}$ of it). The suitable multiplier to calculate the loss of dependency for the age group of the deceased is '17'. When the same is applied, the loss of dependency works out to Rs.16,06,500/- (Rs.94,500/- x 17).

21. So far as the conventional heads, namely towards loss of consortium, loss of estate and funeral expenses, are concerned, the Tribunal has awarded Rs.22,000/- under the said count. But, in view of the judgment of the Honourable Apex Court in **Pranay Sethi's** case (supra), the total amount to which the petitioners are entitled to under the said count will be Rs.70,000/-, as against Rs.22,000/- awarded by the Tribunal. Hence, the petitioners are entitled to an additional sum of Rs.48,000/- under the conventional heads. Thus, in all the petitioners are entitled to a sum of Rs.16,76,500/- towards compensation.

21. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.3,51,000/- to Rs.16,76,500/-. The enhanced amount carries interest at the rate of 7% per annum from the date of petition till the date of realization. The enhanced amount shall be apportioned among the appellants in the same proportion in which the original compensation

amount was directed to be apportioned and disbursed by the Tribunal.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

JUSTICE C.PRAVEEN KUMAR

August 02, 2018
MD

JUSTICE T. RAJANI

