THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.1863 of 2006

JUDGMENT:

This appeal is filed by the petitioners under Section 173 of Motor Vehicles Act challenging the judgment and award dated 17.04.2006 passed in M.V.O.P.No.843 of 2002 on the file of the Motor Vehicles Accidents Claims Tribunal, Guntur – cum - II Additional District Judge, Guntur.

2. The parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the present appeal, in brief, are as follows:

On 13.08.2001 at about 11.00 p.m. one Korimella Srinivasa Rao (hereinafter referred to as 'the deceased') along with his brother was proceeding from Mangalagiri to Tenali on a motor cycle bearing No.AP-7H-5964. The deceased was pillion-rider on the motor cycle. When they reached near Atmakuru donka, the driver of the jeep bearing No.AEG-2715 had driven the same in a rash and negligent manner and dashed the motor cycle from opposite direction. Due to the accident, the deceased fell down from the motor cycle and sustained fractures to right shoulder and other parts of the body. Immediately after the accident, the deceased was shifted to Peoples Trauma and Emergency Hospital, Guntur, wherein he died on 24.12.2001 while undergoing treatment. The accident occurred due to the rash and negligent driving of the driver of the jeep against whom, the Station House Officer, Mangalagiri Rural registered a case in Crime No.139 of 2001 under

Section 337 IPC. After the death of the deceased, the Section of law was altered to Section 304-A IPC. By the time of accident, the deceased was aged about 26 years and used to earn Rs.4,000/- per month. Petitioner No.1 is the wife, Petitioner No.2 is the minor daughter and petitioner Nos.3 and 4 are the parents of the deceased and they are dependents on the income of the deceased. The first respondent is the owner of the jeep bearing No.AEG 2715, which was insured with the second respondent company vide cover note No.082492 with effect from 20.07.2001 to 19.07.2002. Therefore, both the respondents are jointly and severally liable to pay a compensation of Rs.6,75,000/- to the petitioners with interest at 24% per annum.

4. The first respondent filed written statement denying all the averments made in the petition *inter alia* contending that the driver of the jeep was having valid and effective driving licence as on the date of accident. This respondent informed the factum of accident to the second respondent. If the Tribunal comes to a conclusion that the petitioners are entitled for compensation, the second respondent alone has to pay the compensation to the petitioners. The amount of compensation claimed by the petitioners is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. The second respondent filed written statement denying the averments made in the petition *inter alia* contending that the driver of the first respondent was not having valid and effective driving licence, therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. The accident occurred due to the negligence of the rider of the motor cycle. Therefore, the owner and insurer of the motor cycle are

necessary and proper parties to the petition. The petition is not maintainable for non-impleading of necessary parties, i.e. owner and insurer of the motor cycle. The amount of compensation claimed by the petitioners is highly excessive and exorbitant. The petitioners are not entitled for interest exceeding 9% per annum. Hence, the petition may be dismissed.

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

1. Whether the accident occurred due to rash and negligent driving of the driver of jeep bearing No.AEG 2715?
2. To what compensation the petitioners are entitled and from whom?
3. To what relief?

7. During the course of enquiry, on behalf of the petitioners, PWs.1 to 5 were examined and Exs.A.1 to A.17 and X.1 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

8. Basing on the evidence oral and documentary 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.AEG 2715, which resulted in the death of the deceased and allowed the petition in part by awarding a compensation of Rs.2,63,154-55ps in favour of the petitioners with interest at 6% per annum from the date of petition till realisation.

9. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimants preferred the present appeal.

10. Heard Sri Raja Reddy Koneti, the learned counsel for the petitioners/appellants and Sri A.V.K.S.Prasad, learned counsel for the respondents.

11. Learned counsel for the appellants strenuously submitted that the trial Court discarded the testimony of P.W.3 and Ex.A17 salary certificate on flimsy grounds. He further submitted that the trial Court committed grave error while taking the income of the deceased as Rs.15,000/- per year by taking into consideration the second schedule annexed to Section 163-A of Motor Vehicles Act even though the petition is filed under Section 166 of MV Act. Therefore, it is a fit case to allow the appeal.

12. Learned counsel for the second respondent strenuously submitted that the trial Court by taking into consideration the facts and circumstances of the case arrived at a conclusion that the deceased may earn Rs.15,000/- per year, which is just and reasonable. He further submitted that the petitioners failed to prove the recitals of Ex.A17 salary certificate by examining the competent person. He further submitted that the Tribunal awarded just and reasonable compensation, therefore, it is not a fit case to interfere with the same and the appeal is liable to be dismissed.

13. Basing on the rival contentions, the points that arise for consideration in this appeal are:

> Whether the Tribunal has not awarded just and reasonable compensation to the petitioners?

14. As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the jeep

bearing No.AEG 2715, which resulted in the death of the deceased. The finding recorded by the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AEG 2715 became final in view of non-filing of appeal by respondents 1 and 2. Therefore, there is no ground much less valid ground to disturb the finding recorded by the Tribunal on this aspect.

15. As per the testimony of P.W.4, the deceased was admitted in their hospital on 14.08.2001 and died on 24.12.2001. As per the testimony of P.W.4, their hospital issued Exs.A5 to A15 bills and cash receipts. As per the medical bills Ex.A6, the family members of the deceased spent an amount of Rs.93,154/-. The oral testimony of P.W.4 coupled with Exs.A5 to A15 reveals that the family members of the deceased spent an amount of Rs.93,154/- towards medicines and treatment of the deceased. The Tribunal taking into consideration the oral testimony of P.W.4 and Exs.A5 to A15 granted an amount of Rs.93,154/- towards medicines and treatment. The Tribunal awarded just and reasonable compensation under this head. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal on this aspect.

16. As per the recitals of Ex.A2 charge sheet, by the time of accident, the deceased was aged about 26 years. The Tribunal applied multiplier '15'. As per the decision reported in ***SARLA VARMA v. DELHI TRANSPORT CORPORATION***[1] the appropriate multiplier is '17'. The Tribunal committed error while taking the multiplier as '15' instead of '17'. As per the averments made in the

[1] (2009) 6 Supreme Court Cases 121

petition, at the time of accident, the petitioner was working as salesman in wine shop and drawing a salary of Rs.4,000/- per month. To prove the income of the deceased, the petitioners mainly relied on oral testimony of P.W.3 and Ex.A17. As per the testimony of P.W.3, the father of the deceased prepared Ex.A17 salary certificate and he subscribed his signature on it. This clearly indicates that he signed on Ex.A17 without verifying the records. His testimony further reveals that they are not maintaining any acquittance register. Except the self-served testimony of P.W.3, there is no other convincing evidence to establish as on the date of accident, the deceased was working in the wine shop of P.W.3. The possibility of creating this type of certificates in order to claim more compensation from the insurance companies cannot be ruled out. In view of testimony of P.W.3, much weight cannot be attached to Ex.A17 salary certificate. The Tribunal considered various aspects and rightly discarded Ex.A17 salary certificate. I am fully endorsing with the findings recorded by the Tribunal on this aspect. In the absence of any documentary evidence, some guess work is inevitable in order to determine the income of the deceased. By the time of accident, the deceased was aged about 26 years. Even by attending coolie work, he may earn Rs.3,000/- per month. Taking into consideration the age and other attending circumstances, this Court is of the considered view that the deceased may earn Rs.3,000/- per month as on the date of accident. The total claimants are 4 in number. As per the principle enunciated in **Sarla Varma's** case (stated supra) the Court has to deduct 1/4th towards personal expenses of the deceased, which comes to Rs.750/- per month. Therefore, the deceased may contribute an amount of Rs.2,250/- per month to his family. The loss of dependency comes to Rs.2250 X 12 X 17 = Rs.4,59,000/-. The Tribunal awarded an amount of Rs.10,000/- towards loss of estate and Rs.10,000/- towards loss of consortium. Learned counsel for the appellants strenuously submitted that the Tribunal awarded meagre amount under these two heads. To substantiate the argument, he has drawn my attention to ***NATIONAL INSURANCE COMPANY v. PRANAY SETHI AND OTHERS***[2]. As per the principle enunciated in the case cited supra, the legal representatives of the deceased are entitled for an amount of Rs.15,000/- towards loss of estate, Rs.40,000/- towards consortium and Rs.15,000/- towards funeral expenses.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the petitioners are entitled to an amount of Rs.15,000/- towards loss of estate, Rs.40,000/- towards consortium, Rs.15,000/- towards funeral expenses. The compensation awarded under various heads is as follows:

1. Towards medicines and treatment	Rs. 93,154.00
2. Towards loss of dependency	Rs.4,59,000.00
3. Towards consortium	Rs. 40,000.00
4. Towards funeral expenses	Rs. 15,000.00
5. Towards loss of estate	Rs. 15,000.00
Total	Rs. 6,22,154.00

18. The petitioners are also entitled for interest at 6% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. It is the duty of the Court to apportion the compensation amount among the petitioners. The first

[2] AIR 2017 SC 5157

petitioner is the wife, second petitioner is the minor daughter and petitioners 3 and 4 are the parents of the deceased. Taking into consideration the age and future needs of the petitioners, this Court is inclined to apportion the compensation in the following manner:

Petitioner No.1	: Rs.2,61,154.00
Petitioner No.2	: Rs.2,61,000.00
Petitioner No.3	: Rs. 50,000.00
Petitioner No.4	: Rs. 50,000.00

19. In the result, the appeal is allowed in part by enhancing the compensation to Rs.6,22,154/- from Rs.2,63,154/- with interest at 6% per annum on the enhanced amount from the date of petition till the date of realisation. The respondents 1 and 2 are jointly and severally liable to pay the compensation. Respondents 1 and 2 are directed to deposit the enhanced amount within three months from the date of receipt of copy of this order. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

9th April 2018
Rns