

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.806 of 2012

JUDGMENT:

This appeal is filed by the claimants in MV OP No.103 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal cum Judge, Family Court - Additional District Judge, Mahabubnagar, aggrieved by the order and decree dated 22.12.2011, granting compensation of Rs.1,00,000/- with interest at 6%p.a. from the date of petition, till the date of realization, for the death of the deceased – Nowrin Begum in a road accident.

2. The appellants herein are the claimants. The 1st respondent is the owner of the lorry and the 2nd respondent is the insurer, in the original petition. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The facts, in brief, are that the petitioners are the parents of the deceased Nowrin Begum, who was aged four years at the time of accident; on 26.12.2009 the deceased along with her mother, the 2nd petitioner, were going by walk on the left side of the road and at about 11.00 a.m., the driver of the 1st respondent-lorry bearing No.AP 22 T 7848, came from Mahabubnagar side, at high speed, in a rash and negligent manner and dashed the deceased, due to which the deceased sustained grievous injuries all over the body; immediately she was shifted to SVS Hospital, for treatment, where she succumbed to injuries while undergoing treatment at 2.30 p.m.; due to sudden demise of the deceased, the petitioners were subjected to great mental agony and pain; the Police Hanuwada PS registered a case in Cr.No.105 of 2009

under Section 304-A of IPC against the driver of the lorry; the 1st respondent is the owner of the lorry and the 2nd respondent is the insurer and at the time of accident, the policy was in force and hence, both the respondents are jointly and severally liable to pay compensation of Rs.2,50,000/- for the death of the deceased in a motor vehicle accident.

4. Respondents 1 and 2 filed separate counters denying the allegations of the petition; the 1st respondent contended that the driver of the lorry was having valid driving licence as on the date of accident and that the accident did not occur due to rash and negligent driving of the driver of the lorry. The 2nd respondent contended that the driver of the lorry did not possess any valid driving licence at the time of accident; the accident occurred due to the negligence on the part of the deceased and her mother and therefore, they contributed for the accident.

5. Basing on the said pleadings, the Tribunal has framed three issues. During enquiry, on behalf of petitioners, the 1st petitioner was examined as PW.1 and the eye witness to the accident was examined as PW.2 and got marked Exs.A.1 to A.7. On behalf of the respondents, no oral or documentary evidence has been adduced.

6. The Tribunal, basing on the evidence of PW.2, who is an eye witness to the accident and, Exs.A.1-FIR, A.4-crime detail form and A.6-charge sheet, recorded a finding on issue No.1 that the accident occurred on account of rash and negligent driving of the driver of the lorry; on issue No.2, the Tribunal held that the petitioners are entitled for a total compensation of Rs.1,00,000/- with interest at 6%per annum from the date of petition, till the date of realization; and on issue No.3,

the Tribunal directed the respondents 1 and 2 to jointly and severally pay the compensation to the petitioners.

7. Heard Sri N. Ashok Kumar, learned counsel for the appellants and Smt. J Sandhya Rani, learned counsel for 1st respondent. None appeared for the 2nd respondent-insurer, though served with notice. Perused the record.

8. Learned counsel for the appellants contended that the Tribunal ought to have held that in the absence of any rebuttal evidence put forth by the respondents, the petitioners are entitled for compensation as prayed for. He further contended that the Tribunal ought to have awarded interest at 9%per annum instead of 6%per annum.

9. The respondents have not filed any appeal questioning the findings of the Tribunal that the accident occurred on account of the rash and negligent driving of the driver of the 1st respondent or that the compensation awarded by the Tribunal is excessive. However, as seen from the contents of Ex.A.1-FIR, Ex.A.4-crime detailed form and Ex.A.6 charge sheet, police have registered a case against the driver of the lorry and he was charge sheeted before the criminal court for causing the death of the deceased in the accident and hence, I am of the view that the Tribunal has rightly held that the accident occurred only due to the rash and negligent driving of the driver of the lorry.

10. Coming to the claim, though the petitioners, being the parents of the deceased, claimed Rs.2,50,000/- under various heads for the death of their daughter, the Tribunal granted a lumpsum amount of Rs.1,00,000/- as compensation holding that the deceased was aged

about 4 years and not an earning member. The Tribunal has not awarded any amounts for non-pecuniary damages.

11. In the case of death of a child, the child may not be earning anything and may be studying. Therefore, in such cases, the parents cannot be said to be dependent on the child. But the parents would be suffering for the loss of the child and for that they have to be compensated suitably. Admittedly, the claim petition was filed under Section 163-A of the Motor Vehicles Act (for short 'the Act').

12. The Supreme Court in '*Santosh Devi vs. National Insurance Company*¹', while referring to the decisions of the Supreme Court in '*R.K. Malik v. Kiran Pal*²', dealing with the case involving claim of compensation under Section 163-A of the Act, noticed the judgments in '*M.S. Grewal v. Deep Chand Sood*³', '*Lata Wadhwa v. State of Bihar*⁴', '*Kerala SRTC v. Susamma Thomas*⁵', '*Sarla Dixit v. Balwant Yadav*⁶' and made the following observations, which reflect the philosophy that victims of the road accidents and/or their family members should be awarded just compensation:

"In cases of motor accidents the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely.

To put it simply—pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary

¹ 2012(6) SCC 421

² (2009) 14 SCC 1

³ (2001) 8 SCC 151

⁴ (2001) 8 SCC 197

⁵ (1994) 2 SCC 176

⁶ (1996) 3 SCC 179

losses, the law recognizes that payment should also be made for non-pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life, etc. The Act provides for payment of "just compensation" vide Sections 166 and 168. It is left to the courts to decide what would be "just compensation" in the facts of a case."

13. As per the Second Schedule of the Act, even for a non-earning person, aged below 15 years, the loss of earnings can be taken at Rs.15,000/- per annum and the relevant multiplier is 15. If this method is taken into consideration, after deducting 1/3rd amount towards personal expenses of the deceased, the loss of dependency on account of death of the deceased comes to Rs.1,50,000/- (Rs.10,000/- x 15).

14. Further, in view of the decision of the Hon'ble Supreme Court in *Santhosh Devi's* case (supra), wherein it was held that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the courts to consider the said aspect while awarding compensation. The Hon'ble Supreme Court in *R.K. Malik's* case, while relying on *Lata Wadhwa* and *M.S. Aggarwal's* cases (supra), granted a sum of Rs.75,000/- as compensation for the future prospects of the children. In view of the decisions of the Supreme Court, I am of the view that the petitioners are also entitled for compensation of Rs.75,000/- towards future prospects of the deceased. Besides the said amount, the petitioners are also entitled for a sum of Rs.10,000/- towards loss of estate and another sum of Rs.10,000/- towards funeral expenses. Admittedly, the deceased died while undergoing treatment in the hospital and the petitioners might have spent some amount towards transport charges and treatment. In the circumstances, the petitioners are entitled for a sum of Rs.5,000/- towards transport charges and hospital expenses. In all, the petitioners are entitled for compensation of Rs.2,50,000/- (Rs.1,50,000/- towards loss of dependency, Rs.75,000/-

towards future prospects of the deceased, Rs.10,000/- loss of estate, Rs.10,000/- towards further expenses and Rs.5000/- towards transport charges and hospital expenses) as compensation.

15. With regard to the interest, learned counsel for the appellants-claimants contended that the interest awarded by the Tribunal at 6% per annum is very low and as per the judgment of the Hon'ble Supreme Court in '*Jakir Hussein vs. Sabir*⁷' and '*Bithika Mazumdar vs Sagar Pal*⁸', the claimants are entitled for interest at 9% p.a.

16. As seen from the above judgments, the Hon'ble Supreme Court awarded interest at 9% p.a. and in view of the same, the petitioners are entitled for interest at 9% p.a. on the awarded amount from the date of petition, till the date of realization.

17. In the facts and circumstances of the case, the award in MV OP No.103 of 2010 dated 22.12.2011 is modified enhancing the compensation from Rs.1,00,000/- to Rs.2,50,000/- (two lakh, fifty thousand only) with costs and interest at 9% p.a. from the date of petition, till the date of realization. The respondents are directed to deposit the said amount jointly and severally. On deposit of the said amount, the petitioners shall apportion the same equally and are permitted to withdraw the same.

18. The appeal is allowed accordingly. No order as to costs. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12.10.2018
BSS

⁷ 2015(3) ALD 115 (SC)

⁸ 2017(3) ALD 35 (SC)

In the facts and circumstances of the case, the appeal is allowed enhancing the compensation from Rs.1,00,000/- granted in MV OP No.103 of 2010 to Rs.2,50,000/- (two lakh, fifty thousand only), directing the respondents to deposit the said compensation jointly and severally, with costs of MV OP and interest at 9%p.a. from the date of petition, till the date of realization.

On deposit of the said amount, the petitioners shall apportion the same equally and are permitted to withdraw the same.

No order as to costs in this appeal. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

