

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.414 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the order and decree dated 03.08.2007 passed in M.V.O.P.No.207 of 2005 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Vijayawada, granting compensation of Rs.1,00,000/- along with costs and interest @ 7.5% per annum as against the claim of Rs.2,50,000/- for the death of the deceased Putchakayala Srinivasarao in the motor accident occurred on 27.08.2001.

The appellants-wife, minor son and parents of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act alleging that on 27.08.2001 at about 11.30 a.m. when the deceased and one Pitcheswararao were proceeding to Gurrajupalem village on scooter, when they reached near water tank, on Vijayawada road, Mylavaram, one auto bearing No.AP16 W 3650 dashed against the deceased and another due to which they both received grievous and multiple injuries and the deceased succumbed to injuries. A case in crime No.91 of 2001 was registered by Mylavaram Police Station for the offence punishable under sections 337 and 304A of Indian Penal Code. It was further stated that the deceased was aged about 30 years at the time of accident, hale and healthy and earning Rs.3,500/- per month by attending agricultural work. Hence, they claimed compensation of Rs.2,50,000/- from respondents 1 to 3, who are the owner, driver and insurer of the offending vehicle.

No counter was filed by respondents 1 and 2, owner and driver of the offending vehicle, before the Tribunal.

Respondent No.3-Insurance Company filed a counter affidavit denying the material averments of the claim petition and also contending that the accident was occurred due to the negligence of the deceased only. Further, no intimation about the accident was given to the Insurance Company, as such, there was violation of terms and conditions of the policy. Hence, the Insurance Company is not liable to pay any compensation. The claim made by the appellants was excessive.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- (1) Whether the deceased Putchakayala Sreenivasarao died in a motor vehicle accident on 27.08.2001 due to the rash and negligent driving of respondent No.2 driver of auto bearing No.AP16 W 3650 as claimed?
- (2) If so, what is the correct age and income of the deceased by the date of accident?
- (3) Whether the petitioners are entitled to the compensation as prayed for? If so, from whom and what amount?
- (4) To what relief?

On behalf of the appellants, PWs 1 to 3 were examined and Exs.A.1 to A.3 were got marked. On behalf of the respondents, Exs.B.1 to B.3 were got marked. Respondent No.3 filed petition under Section 170 of the M.V.Act and the same was allowed by the Tribunal.

The Tribunal on elaborate consideration of the evidence of PWs 1 and 2, R.W.1 and Exs.A.1-FIR, Ex.A.2-Inquest report and Ex.A.3-MVI report on record held that the deceased died in the accident, which was caused due to the rash and negligent driving of the driver of the offending vehicle. As regards quantum of compensation, though the appellants claimed compensation of

Rs.2,50,000/- in the claim petition, but the Tribunal observed that in her evidence P.W.1-wife of the deceased deposed that compensation of Rs.1 lakh along with interest may be granted to her. Based on the said statement made by P.W.1, the Tribunal granted compensation of Rs.1 lakh to the appellants along with interest @ 7.5% per annum from the date of petition till the date of realization. Questioning the quantum of compensation, the present appeal came to be filed by the appellants.

Having heard both the counsel and perused the evidence on record, this Court found that the Tribunal has not made any serious efforts to grant just, fair and reasonable compensation to the claimants as envisaged under Section 168 of the Motor Vehicles Act, 1988 and as per the law laid down by this Court and Hon'ble Supreme Court in catena of judgments. It is found that as per the oral evidence of P.W.1, the appellants/claimants are the dependents of the deceased. The deceased died in the motor accident. He was aged about 30 years as on the date of accident and used to earn Rs.3,000/- per month as agricultural labour and contribute the same to his family. But the Tribunal on erroneous appreciation of the evidence on record and law, on guess work, had come to the conclusion that the deceased, being a male person aged 30 years by attending coolie work, would get not less than Rs.30/- to Rs.40/-, to meet his personal expenses and to contribute to his family. But, based on the chief affidavit of P.W.1 filed with typographical mistake crept therein to the effect that she claimed Rs.1 lakh with interest, the Tribunal granted total compensation of Rs.1 lakh with interest @ 7.5% per annum. The Tribunal grossly erred in granting meagre compensation of

Rs.1 lakh contrary to the evidence available on record. P.W.1 in her evidence categorically stated that her husband used to earn Rs.3000/- per month by doing agricultural work. Further, she filed claim petition claiming compensation of Rs.2,50,000/-, paid Court Fee of Rs.1860/- and it is to be noted that she is an illiterate and affixed her thumb impression on the deposition. Hence, the statement made by her in the chief examination of Rs.1 lakh towards compensation is to be treated as out of ignorance. Therefore, the claim of P.W.1 that her husband used to earn Rs.3,000/- per month and contribute the same to the family could not be eschewed. The said claim is just and reasonable and has to be accepted in the absence of contrary evidence on record. Even the Hon'ble Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***¹ took the income of a daily wage earner as Rs.4500/- per month. In the present case, the deceased was aged about 30 years and an agricultural worker. Hence, it is just and proper to take his earnings as Rs.3,000/- per month and Rs.36,000/- per annum. As the dependants of the deceased are four in number, as per the ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***², 1/4th has to be deducted from the earnings of the deceased towards personal expenses and the appropriate multiplier is '17'. Then, the loss of dependency works out to Rs.4,59,000/-. In addition, as per the ratio laid down in ***National Insurance Company Limited vs. Pranay Sethi and others***³, the appellants are entitled for Rs.15,000/- towards

¹ 2011 (6) ALT 48 (SC)

² 2009 (6) SCC 121

³ 2017 Law Suit (SC) 1093

funeral expenses, Rs.15,000/- towards loss of estate and the first appellant is entitled for Rs.40,000/- towards loss of consortium. Thus, in all, the appellants are entitled for Rs.5,29,000/- towards compensation along with costs and interest @ 7.5% per annum from the date of petition till the date of realization.

Though the compensation claimed by the appellants before the Tribunal was only Rs.2,50,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***⁴, in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the appellants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.5,29,000/-. However, the appellants shall pay the difference of Court Fee for the excess amount of Rs.2,79,000/-.

Accordingly, the appeal is allowed enhancing the compensation granted by the Tribunal of Rs.1,00,000/- to Rs.5,29,000/- payable by the respondents jointly and severally. The respondents shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with costs and interest, after deducting the amounts if any already deposited, within a period of two months from the date of receipt of a copy of this order. On such deposit, appellant Nos.1, 2 and 4, wife, son and mother of the deceased, are entitled to withdraw Rs.1,50,000/- each along with proportionate costs and interest and appellant No.2, father of the deceased, is entitled to withdraw Rs.79,000/- along with proportionate costs and interest, subject to payment of excess court fee.

⁴ (2003) 2 SCC 274

Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.

(M.GANGA RAO, J)

23rd November, 2018
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