

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.1346 of 2012

JUDGEMENT:

This appeal is directed against the order dated 11.02.2011 in OP No.137 of 2009 on the file of the Chairman, MACT cum IX Additional District Judge, Kamareddy, wherein the claim of the claimant for compensation was allowed in part, awarding a sum of Rs.1,60,000/- with interest at 7.5% per annum from the date of petition and directed respondents 1 and 2 therein to deposit the same jointly and severally.

2. The appellant herein is the claimant-petitioner, the 1st respondent is the owner of the lorry and the 2nd respondent is the insurer of the lorry, 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 petitioner filed claim application under Section 166(1)(c) of the Motor Vehicles Act (for short 'the Act'), seeking compensation of Rs.3,00,000/- for the death of Gadda Sandeep @ Chintu, who is her son, aged five years, in a motor vehicle accident that occurred on 24.12.2003. The case of the petitioner, in brief, is that on the date of accident i.e., on 24.12.2003 deceased Sandeep was traveling in an auto bearing No.AP 25 T 9094 from Dharmaraopet to Sadashivnagar along with two others; the driver of the said auto was driving the same cautiously on left side of the road; when the said auto reached on the outskirts of Sadashivanagar at about 5.45 p.m. a lorry bearing No.RJ 01 G 4779 came at high speed in a rash and negligent manner and dashed the auto from opposite direction, as a result of which the deceased suffered multiple fracture injuries and died on the spot, while the driver of the auto and the other inmates of the

auto suffered injuries; in view of loss of her son, she lost financial support, moral support and mental agony; she estimated her claim at Rs.85,45,000/-, but restricted her claim to Rs.3,00,000/-; the 1st respondent is the owner of the lorry and the 2nd respondent is the insurer; on the date of the accident, the insurance policy was in force and as the accident occurred on account of rash and negligent driving of the driver of the lorry, both the respondents are jointly and severally liable to pay the compensation.

4. The 1st respondent, owner of the lorry, filed a counter *inter-alia* stating that the accident was not due to negligence on the part of the lorry bearing No.RJ 01 G 4779, but it was due to negligence on the part of the auto bearing No.AP 25 T 9094 in which the deceased was traveling; that the vehicle was insured with the 2nd respondent and if any compensation is payable, it is the 2nd respondent, who has to pay the same and as on the date of the accident, the policy was in force.

5. The 2nd respondent-insurer filed a written statement denying the allegations of the petition and reiterating that the accident occurred on account of rash and negligent driving of the auto; age and income of the deceased are not correct; the driver of the auto and the lorry did not have valid driving license, the lorry in question did not have a permit, fitness certificate and as such the 2nd respondent is not liable to pay any compensation; since the negligence was on the part of the auto, the petitioner is not entitled for any compensation; the compensation claimed by the petitioner is exorbitant and the petition is liable to be dismissed.

6. On the basis of the above pleadings, the Tribunal framed three issues. In support of her case, the petitioner examined herself as PW.1 and got marked Exs.A.1 to A.4. No oral or documentary evidence has been adduced on behalf of the respondents.

7. Heard Sri Lakkadi Dayakar Reddy, learned counsel for the appellant and Sri Bathula Raj Kiran, learned standing counsel for the 2nd respondent. None appears for the 1st respondent though served with notice. Perused the records.

8. The main contention of the learned counsel for the appellant is with regard to quantum of compensation awarded by the Tribunal. He contended that though the petitioner filed the claim petition under Section 166(1)(c) of the Act, the Tribunal erred in awarding compensation basing on the Second Schedule of Section 163-A of the Act. He further contended that the compensation awarded to the petitioner is inadequate and should be enhanced taking into consideration of the future prospects of the deceased; that 1/3rd deduction towards personal expenses should not have been made and no compensation was awarded for pain and suffering, love and affection. In support of his submission, he placed reliance upon '*R.K. Malik vs. Kiran Pal*¹', '*Jitender Kumar vs. Oriental Insurance Company Ltd.*²', '*Lata Wadhwa v. State of Bihar*³' and '*Kishangopal vs. Lala & others*⁴'.

9. Learned standing counsel for the 2nd respondent-insurer submits that the compensation awarded by the Tribunal is just, fair and equitable and needs no interference by this Court.

10. Admittedly, the insurance company has not filed any appeal contradicting the findings of the Tribunal that the accident occurred on account of rash and negligent driving of the driver of the lorry and that the petitioner is not entitled for compensation of Rs.1,60,000/-. A perusal of Ex.A.1-FIR and Ex.A.2-charge sheet shows that the police registered a

¹ 2009 ACJ 1924

² 2010 ACJ 242

³ (2001) 8 SCC 197

⁴ (2014) SCC 244

case against the driver of the 1st respondent lorry and filed charge sheet against him before the criminal court. Hence, I am of the view that the Tribunal has rightly held that the accident occurred on account of rash and negligent driving of the 1st respondent lorry alone.

11. Coming to the claim, the petitioner, being the mother of the deceased, claimed a sum of Rs.85,35,000/- as compensation under various heads for the death of her son, who was aged about five years at the time of the accident, but restricted the claim to Rs.3,00,000/-. Learned counsel for the petitioner while relying on the decisions cited supra, contended that the Tribunal erred in granting meager compensation of Rs.1,60,000/- and failed to award any amount under conventional heads and the petitioner, though assessed total loss of compensation on account of the death of the deceased to a tune of Rs.85,45,000/-, restricted her claim only to Rs.3,00,000/- and hence, the Tribunal ought to have allowed the claim as prayed for.

12. A perusal of the impugned award, shows that the Tribunal awarded a sum of Rs.10,000/- towards funeral expenses and Rs.1,50,000/- towards loss of life, love and affection etc., in all Rs.1,60,000/- as compensation basing on the Second Schedule of Section 163-A of the Act, though the claim petition was filed under Section 166(1)(c) of the Act. As the claim petition was filed under Section 166(1)(c) of the Act., I am of the view that the Tribunal ought not to have awarded compensation basing on the Second Schedule.

13. According to the petitioner, her son was aged about five years at the time of the accident. As seen from Ex.A.3 post-mortem certificate and Ex.A.4 inquest report, the age of the deceased was mentioned as three years. The petitioner has not filed any birth certificate of the

deceased to prove that he was aged five years at the time of accident and, therefore, it can be said that the deceased was aged only three years at the time of accident and not five years. Since the deceased was aged only three years, it can be said that he is a non-earning person.

14. In motor accident cases, the endeavour is to put the claimants in the pre-accidental position. The difficulty that arises in the cases of death of children is that they will not be earning at the time of the accident. In most of the cases they will be still studying and not working. Yet it cannot be said that the dependants have not suffered any pecuniary loss. 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. In **R.K. Malik's** (supra) case, the Hon'ble supreme Court confirmed the judgment of the Delhi High Court wherein, the Delhi High Court awarded a sum of Rs.2,25,000/- as compensation for the death of a child aged five years, in addition to a sum of Rs.50,000/- towards loss of company of the child, in all Rs.2,75,000/- as just compensation.

15. In **Lata Wadhawa's** case (supra), the Hon'ble Supreme Court held as follows:

“...contribution of each child towards family should be taken as Rs.24,000/- per annum instead of Rs.12,000/- per annum as recommended by Justice Y. V.Chandrachud Committee, apart from awarding Rs.50,000/- towards loss of company of the child i.e., conventional compensation.”

16. In the circumstances, relying on the decision of the Supreme Court in **Lata Wadhawa's** case (supra), the notional income of the deceased is taken at Rs.24,000/- per annum, as the deceased in the instant case is aged three years and after deducting $1/3^{\text{rd}}$ towards personal expenses ($\text{Rs.24,000/-} - 1/3^{\text{rd}} = \text{Rs.16,000/-}$), and applying the relevant multiplier of 15, as adopted and approved in **Lata Wadhwa's**

case (supra), the petitioner is entitled for Rs.2,40,000/- (Rs.16,000/- x 15) towards pecuniary compensation, apart from Rs.50,000/- towards conventional compensation i.e., loss of love and affection, loss of company of the child, funeral expenses etc. Thus, in all the petitioner is entitled for compensation of Rs.2,90,000/- (Rs.2,40,000/- + Rs.50,000/-). The petitioner is also entitled for interest at 7.5% p.a. on the enhanced amount also from the date of petition, till the date of realization.

17. In the result, the appeal is allowed in part, to the extent stated above. No order as to costs. Miscellaneous petitions pending, if any, in this appeal, shall stand closed.

Date: 12.10.2018
bss



KONGARA VIJAYA LAKSHMI, J