

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.1396 of 2012

JUDGMENT:

This appeal is filed by the 2nd respondent-United India Insurance Company against the order in MV OP No.67 of 2010 dated 29.12.2010 on the file of the Chairman, Motor Accidents Claims Tribunal cum VII Additional District Judge (FTC), Guntur, in granting compensation of Rs.2,80,000/- with interest at 7.5%p.a. from the date of petition, till the date of realization, for the death of the deceased – Bapatla Revati, in a road accident.

2. The appellant herein is the 2nd respondent, the respondents 1 and 2 herein are the claimants and 3rd respondent herein is the 1st respondent-owner 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 facts, in brief, are that the petitioners are the parents of the deceased Bapatla Revati, who was studying first standard at the time of accident; on 03.12.2009 at about 12.00 noon, the driver of the 1st respondent lorry drove it in a rash and negligent manner, without blowing horn and hit the deceased on the road margin, opposite to Venkateswara Cotton Traders, Etukuru Road, Guntur; the deceased sustained crush injury over the head and died on the spot; a case was registered by Lalapet, L & O PS, Guntur in Cr.No.225/ 09 against the driver of the lorry for the offence under Section 304-A of IPC; due to sudden demise of the deceased, the petitioners lost their future dependency and support of the deceased; they filed the claim petition under Sections 163-A and 166 of the Motor Vehicles Act, claiming

compensation of Rs.3,00,000/- for the death of the deceased Revati; 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.

4. The 1st respondent-owner of the lorry remained *ex-parte* before the Tribunal. The 2nd respondent-Insurance Company filed counter denying the allegations of the petition and resisted the maintainability of the petition on the ground that there was no rashness and negligence on the part of the driver of the lorry; the deceased herself was responsible for the accident; they denied the age and schooling of the deceased; the driver of the lorry was not having effective and valid licence by the time of accident and the insurance company is not liable to pay any compensation.

5. Based on the said pleadings, the Tribunal framed three issues. During enquiry, on behalf of petitioners, the 1st petitioner was examined as PW.1 and an eye witness to the accident was examined as PW.2 and got marked Exs.A.1 to A.4. On behalf of the respondents, no oral or documentary evidence has been adduced.

6. The Tribunal, on appraisal of evidence, basing on the evidence of PW.2, who is an eye witness to the accident and Exs.A.1-FIR and A.2 - charge sheet, recorded a finding on issue No.1 that the accident occurred on account of the 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.2,80,000/- with interest at 7.5% per annum from the date of petition, till the date of realization; and on issue No.3, the Tribunal observed that the respondents 1 and 2 are

jointly and severally liable to pay the compensation to the petitioners, as the vehicle of the 1st respondent was insured with the 2nd respondent and as the policy was in force as on the date of accident. Aggrieved by the same, the Insurance Company filed the present appeal.

7. Heard Sri A.V.K.S. Prasad, learned counsel for the appellant and Sri T. Sai Charan, learned counsel for the respondents 1 and 2. None appears for the 3rd respondent-insured, though served with notice. Perused the record.

8. Learned counsel for the appellant-United India Insurance Company Ltd., mainly contended that the Tribunal ought to have granted a sum of Rs.30,000/- towards non-pecuniary damages instead of Rs.50,000/-; that the Tribunal granted a sum of Rs.75,000/- towards loss of future prospects of the deceased, but Section 163-A of the Act, does not stipulate the future prospects of the deceased and hence, the award is liable to be set aside.

9. On issue No.1 the Tribunal held that the accident occurred on account of the rash and negligent driving of the driver of the 1st respondent and the said finding is not seriously disputed by the appellant. However, as seen from the contents of Ex.A.1-FIR, Ex.A.2 charge sheet, the police have registered a case against the driver of the lorry and charge sheeted him 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 a sum of Rs.3,00,000/- under various

heads for the death of their daughter, the Tribunal granted a sum of Rs.2,80,000/- as compensation under various heads relying on the decisions of the Supreme Court in '*National Insurance Company Limited vs. Farzana*¹' and '*R.K. Malik vs Kiran Pal*²'.

11. The Supreme Court in '*Santosh Devi vs. National Insurance Company*³', referring to the decisions of the Supreme Court in '*R.K. Malik*'s case (supra), while dealing with the cases involving claim of compensation under Section 163-A of the Act, noticed the judgments in '*M.S. Grewal v. Deep Chand Sood*⁴', '*Lata Wadhwa v. State of Bihar*⁵', '*Kerala SRTC v. Susamma Thomas*⁶', '*Sarla Dixit v. Balwant Yadav*⁷' and made the following observations:

"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 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

¹ 2009 ACJ 2763

² 2009 ACJ 1924

³ 2012(6) SCC 421

⁴ (2001) 8 SCC 151

⁵ (2001) 8 SCC 197

⁶ (1994) 2 SCC 176

⁷ (1996) 3 SCC 179

left to the courts to decide what would be “just compensation” in the facts of a case.”

12. The Tribunal calculated the loss of dependency basing on the Second Schedule of the Act, taking the income of a non-earning person, aged below 15 years at Rs.15,000/- per annum and the relevant multiplier as ‘15’ and after deducing 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).

13. In *R.K. Malik’s* case (supra), the Hon’ble Supreme Court held as follows:

“It is settled legal principle 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. Reliance in this regard may be placed on the decisions rendered by this Court in ‘*General Manager, Kerala SRTC vs. Susamma Thomas* (supra), *Sarla Dixit vs. Balwant Yadav* (supra) and *Lata Wadhwa’s* case (supra)”

14. In the said case, the Hon’ble Supreme Court, following the decision in *Lata Wadhwa’s* case (Supra) and *M.S.Grewal’s* case (supra), awarded compensation of Rs.75,000/- as compensation towards future prospects of the child.

15. In ‘*Kishan Gopal vs. Lala*⁸’, the Hon’ble Supreme Court in the case of death of a child, relying on the decision in *Susamma Thomas’s* case, awarded a sum of Rs.50,000/- towards conventional heads i.e. loss of love and affection, funeral expenses, last rites etc. The Tribunal also while relying on the above decisions, granted the above amounts towards future prospectus and conventional heads and I see no reason to

⁸ (2014) 1 SCC 244

interfere with the same. Learned counsel for the appellant contended that when the compensation is awarded under conventional heads, the Tribunal again awarded a sum of Rs.5000/- towards funeral expenses. Admittedly, under the conventional heads, funeral expenses are also included. However, the Tribunal has not awarded any amount towards transport charges, as the deceased was shifted to hospital immediately after the accident and after the death, for shifting of the dead body from the hospital to their native place and hence, the said amount of Rs.5000/- awarded by the Tribunal towards funeral expenses can be treated as towards transport charges. Thus, the amount awarded by the Tribunal under the heads referred to above, in all Rs.2,80,000/- as compensation, needs no interference. In view of the facts and circumstances of the case, I see no reason to interfere with the same.

16. For the reasons stated above, the appeal fails and is, accordingly, dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Date: 17.12.2018
BSS

KONGARA VIJAYA LAKSHMI, J