

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1999 OF 2010

JUDGMENT:

The petitioners in OP No. 3 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-Prl. District Judge, Medak at Sangareddy whose claim for compensation of Rs.6.00 lakhs has been decreed partly by awarding compensation of Rs.3.99 lakhs, have come before this court by preferring the present appeal seeking enhancement of compensation.

For the sake of convenience the parties will hereinafter be referred to as 'the petitioners' and 'the respondent-corporation' as they are arrayed in the aforementioned OP.

The factual background of the case is as follows,

Petitioner No.1 is the wife, petitioners 2 to 6 are the children and petitioner No.7 is the mother of the deceased Chittepu Shyamrao who died in a road accident dated 14.12.2008. Their case, as asserted in their claim petition, is that on 14.12.2008 while the deceased Shyamrao was proceeding towards Zaheerabad from Bilalpur village on his motor cycle bearing No. KA 38 H 8507, when he reached near the outskirts of Shaikapur village near Balantha Dari, an RTC bus bearing No. AP 10 Z 2681, which was coming from Zaheerabad side in a rash and negligent manner, gave a hit to his motor cycle, as a result of it the motor cycle driven by him was completely damaged, and he received fatal injuries and died on the spot. Police of Zaheerabad Rural registered a case in

Cr.No.7 of 2008 under Section 304-A IPC against the driver of the RTC bus bearing No. AP 10 Z 2681. The petitioners further asserted that the deceased Shyamrao was hale and healthy prior to the accident and was getting income of Rs.5,000/- per month by doing business and all of them were depending on his income. Due to the sudden demise of the deceased, they were put to suffer a lot. Therefore, they laid the claim petition for compensation of Rs.6.00 lakhs as against the respondent-corporation.

Refuting the above assertions of the petitioners counter was filed by the respondent-corporation. In the counter filed by the respondent-corporation the negligence attributed to the driver of the RTC bus bearing No. AP 10 Z 2681 was denied and it was contended by it that the deceased who was driving the motor cycle at the relevant point of time was negligent, and due to the negligent driving of the motor cycle by him, he hit the motor cycle to the RTC bus. It was also contended by the respondent-corporation that without establishing the negligence on the part of the driver of the RTC bus and the earnings of the deceased, the petitioners are not entitled to get any compensation from them.

The Tribunal framed the following issues based on the aforesaid pleadings of the parties,

- (1) Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
- (2) Whether the petitioners are entitled for compensation, if so, at what quantum and from whom?
- (3) To what relief?

The petitioners, in proof of their contentions, examined two witnesses and marked Exs.A1 to A4. No oral or documentary evidence was adduced by the respondent-corporation.

The Tribunal, relying on the evidence available in the case record, had partly allowed the claim petition filed by the petitioners by awarding compensation of Rs.3.99 lakhs. The petitioners, having felt that the compensation so awarded was not adequate and reasonable, preferred the present appeal.

I have gone through the award impugned in the present appeal and also the evidence available in the case record. The Tribunal, relying on the evidence of Vatam Venkaiah who was examined as P.W.2 by the petitioners, opined that the petitioners could prove that due to the rash and negligent driving of the RTC bus bearing No. AP 10 Z 2681 by its driver, the instantaneous death of the deceased Shyamrao took place. No oral or documentary evidence was produced by the respondent. The respondent-corporation, though attributed negligence to the deceased, it had not proved the same. No oral or documentary evidence was adduced before the Tribunal by the respondent-corporation in proof of its contention that the driver of the RTC bus bearing No. AP 10 Z 2681 was not at fault. It did not choose to examine the bus driver, who, according to them, was not at fault. Relying on the un rebuttal testimony of P.W.2, whose evidence was corroborated with the contents of Exs.A1 to A3, the Court below came to the opinion that the accident dated 14.12.2008 which resulted in instantaneous death of the deceased Shyamrao took

place due to the negligent driving of the RTC bus bearing No. AP 10 Z 2681 by its driver.

It is pertinent to note that, the petitioners in the aforementioned OP have filed the present appeal seeking enhancement of the compensation. Their contention is that the Tribunal ought to have taken the income of the deceased at Rs.5,000/- per month regarding which evidence was given by his wife. The Tribunal, instead of taking the income of the deceased at Rs.5,000/- per month, fixed his income notionally at Rs.3,000/- per month. Their further contention is that the Tribunal ought to have directed the respondent-corporation to pay compensation with interest @ 18% per annum instead of 7.5% per annum. Their another contention is that the amounts awarded under the head of loss of estate and loss of consortium are very low and meager. It is also contended by the petitioners that no amount is awarded by the Tribunal under the head of funeral expenditure. Urging the above mentioned grounds they have sought for enhancement of compensation by modifying the award of the court below.

The petitioners have not produced any documentary evidence in proof of the income earned by the deceased through business. Except the oral evidence of P.W.1, no other evidence is placed on record by the petitioners in proof of the income earned by the deceased through business. Therefore, the Tribunal has roughly assessed his income at Rs.3,000/- per month. As no evidence of definite nature is placed on record in proof of the income of the deceased, the court below cannot be

faulted for assessing the income of the deceased roughly at Rs.3,000/- per month. On duly deducting 1/3rd income of the deceased towards his personal expenditure, it has assessed the loss of income contribution to his family at Rs.2,000/- per month and per year at Rs.24,000/-. On multiplying the annual loss of income contribution of the deceased i.e., Rs.24,000/- with multiplier of '16', (as the deceased Shyamrao was shown as 35 years in Exs.A4 and A5), the Tribunal has assessed the total loss of income contribution of the deceased to his family at Rs.3.84 lakhs.

It appears that the Tribunal has not awarded any compensation under the head of funeral expenditure, except a sum of Rs.10,000/- and Rs.5,000/- respectively under the head of loss of consortium and loss of estate. As per the recent judgment of the Supreme Court reported in *National Insurance Company Limited Versus Pranay Sethi and others*¹ the petitioners are entitled to get compensation of Rs.70,000/- under the conventional heads such as funeral expenditure, loss of consortium and loss of estate. The petitioners are thus entitled to get total compensation of Rs.3,84,000+70,000=4,54,000/-, but not Rs.3,99,000/-.

In the light of my aforesaid held discussion, the appeal filed by the petitioners in OP No. 3 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-Prl. District Judge, Medak at Sangareddy is hereby allowed partly by enhancing the compensation amount from Rs.3,99,000/- to Rs.4,54,000/- (Rupees Four Lakhs and Fifty Four Thousands only). The enhanced compensation amount shall be paid to

¹ AIR 2017 SC 5157

the petitioners by the respondent-corporation with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization.

Miscellaneous applications, if any pending, shall stand closed.

There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.16.11.2018

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