

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.3609 of 2005

JUDGMENT:

Dissatisfied with the award of Rs.2,00,940/- claimed under Section 168 of the Motor Vehicles Act, 1988, read with Rule 471 of the A.P.Motor Vehicle Rules, 1989, seeking enhancement of the same, claimants preferred this Civil Miscellaneous Appeal against the order dated 31.03.2005 in OP.No.12 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal, Nalgonda.

2. The appellants herein are the claimants 1 and 2, respectively, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AHH-2246 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal. Appellants 1 and 2 are parents of the deceased Shiva Prasad who died in the accident.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal and Shiva Prasad, who died in the accident, as deceased.

4. The facts, in brief, are that on 14-12-2002, at about 04.40 p.m., while Shiva Prasad (deceased) was proceeding on Scooter bearing No.DLIS B 4421 with pillion rider, at the

outskirts of Malkapur on N.H.9, Lorry bearing No.AHH 2246 driven by its driver in a rash and negligent manner dashed against the scooter from opposite direction. Due to which the deceased received multiple injuries and died on the spot. The Pillion rider also received fracture injuries. The Choutuppall P.S registered a case in Crime No.180/2002 under Sections 338 and 304 A IPC. Prior to the accident, the deceased was hale and healthy, aged 20 years, working as an Accountant in Geeta Nursing Home, West Maredpally, Secunderabad and earning Rs.2,500/- per month and also studying B.Com. Due to the untimely demise of the deceased in the accident the claimants lost their only son and hence claimed compensation of Rs.2 lakhs initially which they enhanced to Rs.3,50,000/- subsequently.

5. The 1st respondent is the owner and 2nd respondent is the insurer of the offending vehicle.

6. The 2nd respondent, insurer of the lorry, contested the claim denying the rashness, negligence and high speed driving on the part of the driver of the offending lorry, and also disputed the age, avocation and income of the deceased. It also submits that the driver of the offending lorry did not possess a valid driving licence and hence this respondent is not liable to pay any compensation to the claimants as claimed by them.

7. The Tribunal framed the following issue:

“Whether the petitioners are entitled to compensation of Rs.3,50,000/- for the death of their son, Shiva Prasad on 14.12.2002 at 4.40 p.m. at Malkapuram, in a motor vehicular accident due to rash, negligent and high speed driving of lorry AHH 2246, by the driver employed by R1-owner and the lorry having been insured by R2?”

8. During enquiry, on behalf of the claimants, 1st claimant was examined as PW.1, J.Saidulu (pillion rider) who is an eye witness was examined as PW2 and Dr.Ramachandra Reddy was examined as PW3 and marked Exs.A-1 to A-5. On behalf of respondents, no witnesses were examined, however, Ex.B-1, a copy of the insurance policy was marked.

9. The Tribunal basing on the eye witness's testimony of PW2 corroborated by Exs.A1 and A3 held that the accident occurred due to rash and negligent driving by the driver of the offending lorry and made the R1 liable to pay compensation.

10. Though PW1 has testified that her son was earning Rs.3,000/- per month as an Accountant in Geeta Nursing Home, West Maredpally, Secunderabad, the Tribunal held that the salary mentioned in Ex.A4 appears to be on a high side, exaggerated and cannot be relied on for want of acquittance register or muster roll, pay bills etc. in proof of payment of such salary. The Tribunal finally has taken the salary of the deceased at Rs.1,550/- per month and fixed the

multiplier as 15 and worked out Loss of Earnings at Rs.1,85,940/- by deducting 1/3rd from the salary towards his personal expenses. The Tribunal has also awarded an amount of Rs.15,000/- towards loss of love, affection, care in old age, estate etc. In all the Tribunal awarded compensation of Rs.2,00,940/- to the petitioners making liable respondent No.1 to pay which can be indemnifiable by R2.

11. Dissatisfied with the award of compensation granted by the Tribunal, the appellants, who are the parents of the deceased, preferred the instant appeal impugning the award seeking for enhancement of compensation with interest thereon and costs.

12. Heard both sides.

13. Now, the short point that arises for consideration is, whether the appellants are entitled to enhancement of compensation ?

14. Learned counsel for the appellants submits that though Ex.A4-salary certificate is marked showing that the deceased is aged 20 years and earning Rs.3,000/- per month, without any basis, the Tribunal has taken the salary of the deceased at Rs.1,550/- per month. In support of this contention, he relied on the Judgment rendered by the Supreme Court in ***Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited (AIR 2011 Supreme***

Court 2951). He also submits that the Tribunal has not taken into account the future prospects of the deceased while determining the loss of dependency. As such, the claim is required to be enhanced. He further submits that it is settled law that the Tribunal can grant just compensation and grant more than the amount claimed by the petitioners as per the Judgment in **Adam Indur Muttemma and others v. Rathod Reddia and others, 2015 (4) SCC 237**, wherein it is stated that there is no bar in granting just compensation in excess of the claim made by the petitioners subject to payment of court fee on the additional amount granted.

15. In this case it is to be seen that the deceased was working in Geeta Nursing Home, West Maredpally, and earning Rs.3,000/- per month and Ex.A4-Salary Certificate was marked through proper person i.e. PW3. There is no reason for the Tribunal to discard the same by reducing his income to Rs.1,550/- per month. Even otherwise, the Apex Court in a catena of decisions has stated that even for a 'coolie' the monthly income has to be taken at Rs.4,500/-. In support of this contention learned counsel relied on the Judgment in **Ramachandrappa's case (stated supra)** wherein the Apex Court has held as follows;

"14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that wages of the

labourer during the relevant period viz. in the year 2004, was 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between 100/- to 150/- per day or Rs.4,500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from 4,500/- to 3,000/- per month. We, therefore, accept his statement that his monthly earning was '4,500.

16. In the present case it is not the case of the appellants that the deceased is a Coolie, it is their specific case that he is working in a Nursing Home as an Accountant and earning Rs.3,000/- per month. In view of the same, the income of the deceased as claimed by the petitioners should not have been

further reduced. In addition, the petitioners are also entitled to 40% thereon towards future prospects by virtue of the law declared by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others*** (2017 ACJ 2700 = AIR 2017 SC 5157).

17. In view of the above the appellants are entitled to the following compensation;

Income of the deceased	Rs.3,000/-
Add: 40% towards future prospects	Rs.1,200/-
	Rs.4,200/- p.m.
Less: 50% towards personal expenses	Rs.2,100/-
Contribution of the deceased to his family =	Rs.2,100/-

As per ***Sarla Verma and others v. Delhi Transport Corporation and Another*** (2009) 6 SCC 121, the relevant multiplier is '18'. When the said multiplier factor '18' is applied, the loss of dependency works out to Rs.4,53,600/- (2,100 x 12 x 18). As per ***Pranay Sethi case (supra)*** an amount of Rs.30,000/- has to be awarded towards loss of Estate and funeral expenses. Then the total compensation works out to Rs.4,83,600/-.

18. Though the compensation is in excess of the claim of the appellants, as per the Judgment in ***Adam Indur Muttemma's case (supra)*** there is no bar in granting just compensation in excess of the claim made by the petitioners

subject to payment of court fee on the additional amount granted.

19. Accordingly, the MACMA is allowed granting compensation of Rs.4,83,600/- as against Rs.2,00,940/- awarded by the Tribunal and the same is accordingly granted. The appellants are entitled to interest on the enhanced compensation of Rs.2,82,660/- at 7.5% per annum from the date of petition till realization. However, the appellants should pay the Court fee on the enhanced amount of compensation, before the Court below or the Tribunal may deduct the differential Court fee from out of the enhanced compensation deposited. The appellants are also at liberty to withdraw their respective shares.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A.RAJASHEKER REDDY, J

23.01.2019
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