

**HONOURABLE SRI JUSTICE T. AMARNATH GOUD**

**M.A. C.M.A. No.84 OF 2015**

**JUDGMENT:**

Questioning liability and quantum of compensation awarded by the learned Chairman, Motor Accidents Claims Tribunal - cum - X Additional Chief Judge, City Civil Court, Hyderabad, by the award and decree dated 16.08.2014 in M.V.O.P. No.1047 of 2012, Insurance Company preferred this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988.

2. Appellant viz., Royal Sundaram Alliance Insurance Company Limited, Somajiguda, Hyderabad, which is insurer of the lorry bearing No.AP-22-Z-9646 which is involved in the accident is respondent No.1 before the Tribunal, while respondent Nos.1 to 5 herein are claimants, and respondent No.6, who is owner of the lorry, is respondent No.2.

3. Respondent No.1 is the wife and respondent Nos.2 to 5 are minor children of Srinu alias Srinaiah, who died in the accident in the instant case.

4. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

5. Facts of the case, in brief, are as under:

(a) On 04-04-2012 at 6.00 p.m., while Srinu alias Srinaiah along with P. Kumar and P. Swami was going to Sheriguda

Badriahpally of Kothur Mandal on Hero Honda CBZ Motorcycle bearing No.AP-22-Z-9646, on NH - 7, Lingareddyguda outskirts, near Venu Madhav fields, driver of the lorry bearing No.AP-28-TC9579, which was going in front of them from Jadcherla towards Hyderabad, drove it at high speed and in a rash and negligent manner and all of a sudden applied brakes recklessly, due to which rider of the motorcycle hit the lorry from its behind, as a result, Srinu alias Srinaiah and Swami fell down and sustained grievous bleeding injuries and Srinu alias Srinaiah died in the Government Hospital, Shadnagar while undergoing treatment and Swami died while shifting him to Osmania General Hospital.

(b) Police of Shadnagar Police Station registered a case in Crime No.143 of 2012 for the offences punishable under Sections 304-A and 337 of Indian Penal Code, 1860, against the driver of the lorry, and on completion of investigation, they filed charge sheet.

(c) The deceased Srinu alias Srinaiah by working as mason used to earn Rs.7,500/- per month and used to contribute the same to the welfare of the claimants and they are totally dependants on him. Claiming that the deceased was sole earning member of their family consisting of six (6) members including the deceased, claimants laid the claim for Rs.7,50,000/- towards compensation against respondent Nos.1 and 2, who are owner and insurer of the lorry that involved in the accident, jointly and severally liable to pay.

6. Respondent No.1, owner of the lorry remained *ex parte* before the Tribunal. Insurance Company filed its counter denying the case of the claimants and stating that the driver of the lorry has no valid and effective driving licence to drive the lorry, as such, the claimants are not entitled to any compensation against it and also stating that the amount claimed is excessive, sought to dismiss the claim petition.

7. Based on the pleadings, the following issues were framed by the Tribunal for trial:

- “1. Whether the accident took place due to rash and negligent driving of the vehicle bearing No.AP 28 TC 8579 causing death of deceased V. Srinu @ Srinaiah?
2. Whether the petitioner is entitled for compensation? If so, to what extent and from whom?
3. To what relief?”

8. To substantiate the case of the claimants, claimant No.1, who is wife of the deceased, examined herself as PW.1 and also examined direct eyewitness to the accident as PW.2 and got marked Exs.A-1 to A-10. On behalf of the insurer, its manager was examined as RW.1 and got marked Ex.B-1.

9. The Tribunal, on appreciation of evidence, both oral and documentary, let in by the parties, relying on the oral evidence of PW.2 Patnam Kumar, who is direct eyewitness to the accident, and documentary evidence under Exs.A-1 to A-6 finding that neither the owner or driver of the lorry was examined to rebut the evidence of PW.2, held that the accident occurred due to rash and negligent driving of the driver of the lorry.

10. So far as compensation is concerned, relying on Ex.A-3, certified copy of the inquest report, treating the deceased as 35 years old, and relying on the police record and also the decision of the Supreme Court that even a vegetable vendor earns Rs.6,500/- per month, considering that the deceased was a mason by profession, fixed his monthly income as Rs.8,000/- per month which comes to Rs.96,000/- ( $\text{Rs.8,000/-} \times 12$ ) per annum, and deducting  $\frac{1}{4}$ <sup>th</sup> ( $\text{Rs.96,000/-} \times \frac{1}{4} = \text{Rs.24,000/-}$ ) therefrom towards his personal expenses as the dependants are five (5) in number, by applying multiplier '16', awarded a sum of Rs.11,52,000/- towards loss of dependency. Accordingly, relying on the decisions of the Apex Court, awarded a sum of Rs.1,00,000/- towards consortium to petitioner No.1, and Rs.1,00,000/- towards loss of love and affection to petitioner Nos.2 to 5, and Rs.25,000/- towards funeral expenses. Thus, the Tribunal awarded a total sum of Rs.13,77,000/- to the petitioners towards compensation with interest at 7.5% per annum. Assailing the same, the insurer preferred this appeal.

11. Sri Kota Subba Rao, learned counsel for the insurer, submits that the Tribunal erred in fixing the liability on the driver of the lorry though the deceased, rider of the motorcycle, and another pillion rider, who were proceeding on the motor cycle (triple riding) against the law, were equally negligent and contributed to the accident. He further submits that the monthly income of the deceased fixed by the Tribunal and the amounts awarded towards consortium and funeral expenses are on higher side and the same may be reduced and also sought to reduce the compensation awarded by the Tribunal.

12. Sri K. Jagathpal Reddy, learned counsel for the claimants, supporting the award passed by the Tribunal submits that there are no grounds to interfere with the award passed by the Tribunal.

13. So far as liability for occurrence of the accident is concerned, documentary evidence under Exs.A-1 to A-5, First Information Report, charge sheet, inquest report, post-mortem report and motor vehicle inspector report respectively, and also the oral evidence of PW.2, who was a direct eyewitness to the accident, clearly show that the driver of the lorry was at fault and due to his reckless driving in a rash and negligent manner and applying sudden brakes, accident took place. Thus, no fresh ground is made out by the insurer to interfere with the finding of the Tribunal in this regard. Hence, the finding of the Tribunal on issue No.1 that the accident

occurred due to rash and negligent driving of the driver of the lorry needs no interference and the same is confirmed.

14. Coming to quantum of compensation, considering that the deceased was working as a mason and relying on the decisions of the Supreme Court referred supra, treating that the deceased was a skilled labourer, the Tribunal has rightly fixed monthly income of the deceased as Rs.8,000/- per month and the same needs no interference. Since the claimants, who are wife and children of the deceased, are five (5) in number, the Tribunal rightly deducted 1/4<sup>th</sup> of monthly income towards personal expenses of the deceased. Further, Ex.A-3 certified copy of the inquest report shows the age of the deceased as 35 years, and, therefore, the Tribunal rightly treated the deceased as 35 years old at the relevant time. Accordingly, as per the decision of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation**<sup>1</sup>, for the age group of the deceased, the appropriate multiplier is '16' and, therefore, the Tribunal rightly adopted multiplier '16' for computing loss of dependency. Hence, these findings of the Tribunal also need no interference and consequently, the sum of Rs.11,52,000/- awarded towards loss of dependency needs no interference.

15. So far as Rs.1,00,000/- awarded to claimant No.1, wife of the deceased, towards consortium and Rs.25,000/- awarded towards funeral expenses are concerned, totalling to Rs.1,25,000/-, in view of

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<sup>1</sup> [(2009) 6 SCC 121] {SC-DB}

the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi**<sup>2</sup>, wherein Rs.15,000/- is awarded towards funeral expenses, Rs.40,000/- towards consortium and Rs.15,000/- towards loss of estate, totalling to Rs.70,000/- towards conventional sum, following the said decision, a sum of Rs.70,000/- is awarded instead of Rs.1,25,000/- and the same are accordingly reduced.

16. Coming to Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection to claimant Nos.2 to 5, in **Pranay Sethi's case** (Supra 2), though the Supreme Court has not considered the said aspect, in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram**<sup>3</sup>, the Supreme Court has granted Rs.50,000/- each to minor children. Hence, claimant Nos.2 to 5, who are minor children of the deceased, are entitled to Rs.50,000/- each, totalling to Rs.2,00,000/-, towards loss of love and affection. However, since the present appeal is preferred by the insurer and the claimants have not chosen to file either cross-objections or separate appeal, this Court is not inclined to enhance the said amount, and, therefore, the amount of Rs.1,00,000/- granted by the Tribunal towards love and affection to claimant Nos.2 to 5 is maintained.

17. Thus, except reducing the amount from Rs.1,25,000/- to Rs.70,000/- (Rupees seventy thousand only) towards consortium and funeral expenses, as held in paragraph No.15, the award passed by the

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<sup>2</sup> 2017(6) 170 (SC)

<sup>3</sup> 2018 LawSuit (SC) 904

Tribunal is confirmed in all other aspects. Therefore, the claimants are entitled to Rs.13,22,000/- (Rupees thirteen lakhs twenty two thousand only) instead of Rs.13,77,000/- awarded by the Tribunal.

18. With the above modification, the Civil Miscellaneous Appeal is allowed in part reducing the compensation. No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the civil miscellaneous appeal stand closed.

**August 9, 2019.**

**PV**

**T. AMARNATH GOUD, J**

