

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.329 of 2019

JUDGMENT:

Challenging the order and decree dated 28.09.2018 made in M.V.O.P.No.41 of 2012 on the file of the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the appellants/claimants preferred the present appeal.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the claimants, who are the husband and children of one J.Madhavi (hereinafter referred to as "the deceased") filed a petition, claiming compensation of Rs.25,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 03.06.2011. It is stated that on 03.06.2011 while the deceased as pillion rider and her brother Pradeep as rider were returning to their house after attending a function at Karmanghat on a motor cycle bearing No.AP-09-AR-6068 and reached near Gayathrinagar X Roads along with her husband and others were travelling in a car at about 12.30 hours, all of a sudden the deceased fell down

from the motor cycle, sustained grievous head injury and other injuries on vital parts of the body and was immediately shifted to Aware Global Hospital, Hyderabad. The Police, Saroornagar Police Station, registered a case in Crime No.301 of 2011 for the offence punishable under Section 304-A of I.P.C. against the driver of the motor cycle and took up the investigation. It is stated that prior to the accident, the deceased was hale and healthy and was working as Principal and Senior English Lecturer in Krishnaveni Talent School, Ibrahimpatnam, Ranga Reddy District and earning more than Rs.20,000/- per month. Since the accident occurred due to the rash and negligent driving of the driver of the motor cycle, the claimants laid the claim-petition against respondent Nos.1 and 2, who are the owner and insurer of the said motor cycle, respectively.

4. Before the Tribunal, respondent No.1 remained *ex parte*.

5. Respondent No.2, filed counter denying the averments in the petition including the manner in which the accident took place, age, income and avocation of the deceased. It is further denied that the driver of the motor cycle was having valid insurance policy at the time of the accident and contended that

the compensation claimed is excessive and prayed to dismiss the claim-petition.

6. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident took place due the rash and negligent driving of the vehicle bearing No.AP-09-AR-6068 causing death of Smt.J.Madhavi ?
- 2) Whether the petitioners are entitled for compensation? If so, to what extent and from whom?
- 3) To what relief?

7. During trial, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, no witnesses were examined and Ex.B1 was marked.

8. After analyzing the evidence available on record, the Tribunal dismissed the petition holding that the claimants failed to establish that there is rashness or negligence on the part of the driver of the crime vehicle for causing the death of the deceased Madhavi and the 2nd respondent proved that the policy obtained by the owner of the crime vehicle is only Act policy, which does not cover the risk of the pillion rider and so the 2nd

respondent is also not liable to pay compensation. Challenging the same, the present appeal is filed.

9. Heard both sides and perused the material available on record.

10. The point that arises for consideration in this appeal is whether the claimants have proved that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and, if so, what is the just and reasonable compensation to which the claimants are entitled to?

11. A perusal of the material on record shows that based on the complaint lodged by the husband of the deceased, who was examined as P.W.1 before the Tribunal, the Police, Saroornagar Police Station, has registered a case against the rider of the motorcycle. The contents of the F.I.R., which was marked as Ex.A1, discloses that the accident occurred due to the rash and negligent driving of the rider of the motorcycle on which the deceased was proceeding as pillion rider. Admittedly, there is a delay of three days in lodging the complaint. But, the delay itself will not take away the right of the appellants if there is an acceptable explanation for the delay. In *Ravi v. Badrinarayan*

and others¹, while dealing with the delay in lodging the F.I.R. in motor accident cases, the Apex Court held as under;

"The purpose of lodging the FIR in motor accident cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if there is delay, the same deserve to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground."

¹ AIR 2011 SC 1226

12. It is also to be noted that in a claim for compensation under Section 166 of Motor Vehicles Act, 1988, the claimants have to prove the incident only on preponderance of probabilities and the standard of proof beyond reasonable doubt is not required as held by the Hon'ble Supreme Court in the decision rendered in *Bimla Devi Vs. Himachal Road Transport Corporation*². After the investigation, the investigating officer has filed charge sheet against the rider of the offending motorcycle concluding that the accident occurred only due to his negligence. Hence, this Court held that the accident occurred only due to the rash and negligent driving of the rider of the motorcycle bearing No.AP 09 AR 6068.

13. Insofar as the quantum of compensation is concerned, considering the age and avocation of the deceased, the Tribunal has rightly fixed the income of the deceased at Rs.10,000/- per month. Insofar as the future prospects are concerned to the housewives, the Apex Court recently in ***Kirti and another etc. v. Oriental Insurance Company Ltd.***³ made certain general observations regarding the issue of calculation of notional income for homemakers and the grant of future prospects with

² AIR 2009 SC 2819

³ AIR 2021 SC 353

respect to them, for the purposes of grant of compensation, which can be summarized as follows:

“a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation’s international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”

14. In view of above said decision and as the deceased was aged about 38 years, the appellants shall be entitled to future prospects at the rate of 40 %. Therefore, monthly income of the deceased comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-). From this, 1/3rd is to be deducted towards personal expenses of the deceased following **Sarla Verma v. Delhi Transport Corporation**⁴. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.9,333/- per month. Since the age of the deceased was 38 years at the time of the accident, the appropriate multiplier is ‘15’ as per the decision reported in **Sarla Verma v. Delhi Transport Corporation (supra)**. Adopting multiplier ‘15’, the total loss of dependency works out to Rs.9,333/- x12 x15 = Rs.16,79,940/-. The claimants are also entitled to Rs.77,000/- towards conventional heads as per **Pranay Sethi’s** case (supra. Thus, in all the claimants are entitled to Rs.17,56,940/-.

⁴ 2009 ACJ 1298 (SC)

15. In the result, the appeal is allowed and the appellants/ claimants are entitled to compensation of Rs.17,56,940/- with interest @ 7.5% per annum from the date of petition till the date of realisation. The respondents are directed to deposit the said amount within two months from the date of receipt of a copy of this order. Out of the said amount, the claimant No.1 is entitled to Rs.5,56,940/- and claimants 2 and 3 are entitled to Rs.6,00,000/- each. After such deposit, the major claimants are permitted to withdraw their respective share amounts without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

17.10.2022
VSL/TSR

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.329 of 2019

17.10.2022
VSL/TSR

