

THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.977 of 2013

JUDGMENT:

Heard M/s. Mirza Safiulla Baig and Sri. N. Chandra Sekhar, learned counsel for the petitioner, Sri Narsi Reddy Teegla, learned counsel for 2nd respondent.

2. This appeal has been filed by the claim petitioner aggrieved by the quantum of compensation awarded in the decree and order dated 12.10.2012 in M.V.O.P.No.1950 of 2010 on the file Chairman, Motor Accident Claims Tribunal-Cum-IX Additional Chief Judge (Fast Track court), City Civil Court, Hyderabad.

3. The wife V. Manjunath/deceased who died in motor accident dated 23.04.2010 filed the claim petition seeking compensation of Rs.5,00,000/- The 3rd and 4th Respondents are the parents-in-law of the petitioner.

4. The brief facts of the case are that on 23.04.2010 while the V.Manjunath was proceeding on a motorcycle bearing registration No.KA-32-S-4449 (for short "the Motorcycle") towards Donga Yenkapally village and when he reached Laxmidevpally gate one

lorry bearing registration No.AP-29-T-6057 (for short “the lorry”) came in opposite direction and dashed the motorcycle which resulted in his severe injuries and had been moved to hospital for treatment. However, on 26.04.2010 succumbed to injuries. Thus the claim petition.

5. The tribunal on analyzing the materials concluded that the accident occurred due to rash and negligent driving of the lorry and though arrived at higher compensation than claimed in the petition, restricted the award to Rs.5,00,000/- with 7% per annum against the owner and insurer of the lorry/1st & 2nd respondents jointly and severally.

6. In appeal, the claim petitioner contended that the tribunal ought to have awarded the compensation arrived in her favour and restricting the amount to the claim in the petition is not justified, against the statutory provisions and the settled proportions. Thus, prayed for re-evaluation.

7. Learned counsel for the second respondent contended that the tribunal had considered and evaluated the petitioner's case

leniently and awarded the amount as per the claim. However, the tribunal erroneously awarded the compensation under the heads of pain and sufferings, transportation and clothing without there being any acceptable evidence. That apart the amounts awarded under the heads of consortium is excessive. Thus, prayed for reassessment.

8. In this position, the point arises for determination is:

“Whether the compensation awarded to the petitioners is just and proper” ?

9. The death of Manjunath/deceased in the accident and the liability fastened on the owner and insurer of the lorry/1st and 2nd respondents is not in dispute. The petitioner pleaded as PW-1 testified that the deceased was aged 28 years and as carpenter was earning Rs.5,000/- per month. These claims are not substantiated by any document. However, in the Post Mortem Examination Report/Ex.A-5 the approximate age of the deceased has been recorded as 30 years. Similar entry is found in the inquest report/Ex.A-2. In absence of any other material and the above noted entries, the age of Manjunath/deceased at relevant

period can be expected at 30 years. In regard to occupation and income in absence of any corroborating material, the tribunal, by relying on the authority, reported in 2011 ALD 75 SC had notionally taken monthly income at Rs.4500/-. The petitioner failed to point out any other factor for favourable consideration. Hence, the conclusion of the tribunal on this aspect is found appropriate.

10. In *National Insurance Company Ltd. Vs. Pranay Sethi and others*¹ the Hon'ble Apex Court held that while computing the compensation in the cases of death, future prospects has to be included and the self-employed are also entitled for the same. Having regard to the age and occupation 40% of income shall be taken as future prospects. Further, considering number of dependents $\frac{1}{3}^{\text{rd}}$ of the income has to be deducted towards personal expenditure. Thus, the annual contribution of the deceased to the petitioner and 3rd and 4th respondents would be of Rs.33,600/- ($\frac{1}{3}^{\text{rd}}$ of Rs.50,400/-). If this amount is multiplied with the relevant multiplier to the age of the deceased

¹ (2017) 16 SCC 860

i.e., 17, the sum would be of Rs.5,71,200/- (Rs.33,600x 17). The petitioner and 3rd and 4th respondents are entitled for this amount towards 'Loss of Dependency'.

11. Besides, the petitioner and 3rd and 4th respondents are also entitled for compensation under 'conventional heads' as prescribed in the dictum of *Pranay Sethi* (supra) i.e., Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral charges and Rs.40,000/- to the petitioner towards spousal consortium.

12. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation to 'consortium' given in the authority of *Magma General Insurance co. Ltd. vs. Nanu Ram & ors.*², in the authority between *United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others*³ reinforced that the amounts for loss of consortium shall be awarded to the parents as filial consortium for the loss of love and affection and companionship of their grown up children. Therefore, the 3rd and 4th respondents are entitled to Rs. 40,000/- each towards filial consortium.

² (2018) 18 SCC 130

³ Civil Appeal No.2705 of 2020, dt.30.06.2020

13. In addition, considering the circumstances, the tribunal awarded compensation of Rs.5,000/- and Rs.2,000/- respectively towards transportation and damages to clothes and are affirmed.

14. Thus, in total, the petitioners are eligible for the compensation as follows:

DESCRIPTION	AMOUNT (Rs.)
Loss of Dependency	5,71,200.00
Loss of Estate	15,000.00
Funeral Charges	15,000.00
Spousal consortium to petitioner	40,000.00
Filial Consortium to 3 rd and 4 th respondents @ Rs.40,000/-each	80,000.00
Damages to clothes	2,000.00
Transportation	5,000.00
TOTAL	7,28,200.00

15. Having regard to the statutory obligation under section 168 of the Motor Vehicle Act and the pronouncement of the Hon'ble Apex Court in Nagappa vs Gurudayal Singh & Others⁴, the above arrived compensation, is awarded to the petitioner and the 3rd and 4th Respondents, as just and proper compensation.

16. For the aforesaid reasons, the appeal is allowed as follows:

⁴ Civil Appeal No. 7989 of 2002

(i) the petitioner and the 3rd and 4th respondents are awarded Rs.7,28,200/- (Rupees seven lakhs twenty eight thousand and two hundred only) with interest @ 7.5% per annum with costs., from the date of petition till date of realization;

(ii) the owner and the insurer/1st and 2nd respondents are jointly and severally held liable to pay the compensation and they are directed to deposit the awarded amount by setting of the amounts paid if any, within one month from the date of receipt of a copy of this judgment;

(iii) the apportionment among the petitioner and the 3rd and 4th Respondents shall be in the ratio of 60:20:20.

(iv) on deposit of the awarded amount, the petitioner and 3rd and 4th Respondents are permitted to withdraw entire amount as per the above apportionment.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N.TUKARAMJI, J

Date: 20.07.2022
VRKS

THE HON'BLE SRI JUSTICE N. TUKARAMJI

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