

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

M.A.C.M.A.NO.1696 OF 2014 & CROSS OBJECTION No.1 of 2011

JUDGMENT:

Assailing the judgment and decree passed by the Court of the Chairman, Motor Accident Claims Tribunal – cum – District Judge, Adilabad in O.P.No.185 of 2003 dated 10.06.2006, the Insurance Company filed the appeal, seeking enhancement of compensation, claimants have filed the cross-objection.

2. The first claimant is the wife of the deceased – Chintham Babu, claimants 2 to 4 are the minor children of the deceased and claimant No.5 is the mother of the deceased.

3. The case of the claimants is that on 31.10.2002 at about 1.00 p.m., at or near the railway over bridge in Mandamarri, when the deceased was proceeding on his motorcycle bearing No. AP 36 C 420 from Chakepalli village to Srirampur, the driver of the tractor – trailer bearing No. AP 1 E 3030 coming in opposite direction in a rash and negligent manner, hit the deceased, as a result, the deceased sustained serious head injury and other injuries on other parts of the body, and was shifted to Area Hospital at Singareni Collieries Company

Limited at Ramakrishnapur and from there he was taken to Medwin Hospital at Hyderabad for better treatment, but the deceased succumbed to injuries on 3.11.2002 while undergoing treatment. A case under Section 304-A IPC was registered against the driver of the tractor - trailer.

4. The further case of the claimants is that prior to the accident, the deceased was hale and healthy and was aged 39 years, and an employee of Singareni Collieries Company Limited, Srirampur in Adilabad District, and was getting a salary of Rs.10,614/- of per month, and because of the accident, the claimants lost their source of income and are subjected to severe hardship, and with these averments inter alia, filed the claim petition seeking compensation of Rs.14,00,000/-.

5. The owner of the tractor – trailer bearing No. AP 1 E 3030 remained ex parte, and the 2nd respondent – Insurance Company filed counter affidavit and denying the averments made in the claim petition, sought for dismissal of the same.

6. The Tribunal based on the evidence of P.W.1, who is the wife of the deceased, and P.W.2, who is the eye witness to the accident and Ex.A-1 FIR, and by discarding the evidence of

R.W.1, who is the driver of the crime vehicle, held that the accident occurred due to rash and negligent driving of the driver of the tractor - trailer i.e., R.W.1.

7. Further, taking the income of the deceased as Rs.9,379/- and by applying the multiplier of 12.79 and deducting 1/3rd towards personal expenses, awarded an amount of Rs.9,00,384/- towards loss of earnings. The Tribunal also awarded an amount of Rs.7,500/- towards loss of consortium, Rs.7,500/- towards loss of estate, Rs.10,000/- towards medical expenditure, Rs.1,000/- towards funeral expenses and Rs.3,000/- towards transportation charges, and thus in all granted an amount of Rs.9,29,384/- with interest at the rate of 6 per cent per annum from the date of the claim petition till the date of realization.

8. As stated above, both the Insurance Company as well as the claimants filed the appeal and the cross-objection respectively.

9. Sri M.Ramakrishna Reddy learned counsel appearing for the appellant – insurance company submits that R.W.1 is the driver of the tractor and he has categorically deposed that the deceased hit the tractor / trailer from behind and fell down and

sustained head injury, and hence R.W.1 cannot be found guilty and at the most the negligence can be apportioned between both the deceased and R.W.1 in equal ratio, but the Tribunal without appreciating the same, found the driver of the tractor/trailer – R.W.1 guilty. Alternatively, he submits that the Tribunal has granted reasonable compensation and hence the same may not be interfered with.

10. On the other hand Sri V.Subrahmanyam, learned counsel for the respondents / claimants submits that the Tribunal appreciating the entire evidence both oral and documentary held that the accident occurred due to rash and negligent driving of the driver of the tractor – trailer and the said finding of fact may not be interfered with by this court. He submits that the Tribunal has taken the net salary of the deceased instead of gross-salary, and further it did not grant future prospects and the amounts granted under the conventional heads is very less and, therefore, he seeks to enhance the compensation.

11. Having regard to the facts and circumstances of the case and the rival contentions, the issues that arises for consideration are (1) whether the finding of the Tribunal that accident occurred due to rash and negligent driving of the driver

of the tractor-trailer warrants any interference? and (2) whether the compensation granted by the Tribunal needs to be enhanced?

12. The case of the claimants is that on 1.00 p.m. at or near the railway over bridge in Mandamarri when the deceased was proceeding on his motor cycle bearing No. AP 36 C 420 from Chakepalli village to Srirampur, the driver of the tractor-trailer coming in opposite direction in a rash and negligent manner hit the deceased and as a result, he sustained head injury and other injuries and thereafter while taking treatment succumbed to injuries. P.W.2 is stated to be the eye witness to the accident. He is stated to be the auto rickshaw driver and a resident of Mandamarri village, deposed that on the date of accident at about 1.00 p.m., when he was going on his auto riskshaw behind the deceased, who was going on motorcycle and at the place of accident i.e., near railway over bridge of Mandamarri, a tractor came in opposite direction and hit the deceased. He has categorically stated that accident occurred due to the fault of the driver of the tractor, as he came in high speed. Further as per Ex.A-6, which is the charge sheet filed after investigation shows that the police filed charge sheet alleging that the driver of the tractor-tractor was negligent in causing the accident and P.W.2

is shown as listed witness in the charge sheet. Considering the evidence of P.W.2 coupled with Exs.A-1 to A-6, the Tribunal discarded the evidence of R.W.2, and recorded finding of fact that accident occurred due to rash and negligent driving of the driver of the crime vehicle and that the deceased died in the said accident. Having regard to the facts and circumstances of the case, the finding recorded by the Tribunal warrants no interference.

13. Coming to the quantum, the case of the claimants is that the deceased was working as Coal Filler in M/s Singareni Collieries Company Ltd., R.K.7 New Tech, Srirampur in Adilabad District and they filed Ex.A-13, which are the salary particulars of the deceased. A perusal of Ex.A-13 shows that the gross salary of the deceased was Rs.10,614/- per month. But the Tribunal has taken the net salary. It is well settled that while taking the income of the deceased for granting compensation, amounts towards income tax and professional tax have to be deduced. In the present case, there is no dispute that the income of the deceased is within the exemption limits of the Income Tax and hence his gross salary has to be taken into consideration for calculating the quantum of compensation.

14. Thus, Rs.10,614/- is taken as the monthly income of the deceased and the annual income comes to Rs.1,27,368/-. The number of dependents of the deceased are five in number and hence $1/4^{\text{th}}$ has to be deducted towards living and personal expenses of the deceased. But in the present case, the Tribunal has deduced $1/3^{\text{rd}}$, and hence the same is accordingly modified. If $1/4^{\text{th}}$ is deducted from Rs.10,614/-, the income comes to Rs.95,526/-.

15. As per Ex.A-4 postmortem certificate, the deceased is aged 39 years. In view of the judgment of the Apex Court in NATIONAL INSURANCE CO. LTD. Vs. PRANAY SETHI¹, for the age group of the deceased, an addition of 50 per cent has to be made to the established income of the deceased towards future prospects. 50% of Rs.95,526/- comes to Rs.47,763/-, and thus the annual income of the deceased including future prospects comes to Rs.1,43,289/-.

16. The deceased is aged 39 years, and the appropriate multiplier as per the judgment of the Apex Court in SMT. SARLA VARMA v. DELHI TRANSPORT CORPORATION² is '15'. Thus the loss of dependency comes to Rs.21,49,335/- (Rs.1,43,289/- x 15 = Rs.21,49,335/-). The Tribunal has taken the multiplier

¹ (2017)16 SCC 680

² (2009)6 SCC 121

as '12.79', which is incorrect and hence the same is accordingly modified.

17. Further, as per the judgment of the Apex Court in Pranay Sethi's case (supra), the claimants are entitled to an amount of Rs.77,000/- towards conventional heads. The amounts granted by the Tribunal under the conventional heads is accordingly enhanced as per the judgment of the Apex Court. The amount of Rs.10,000/- granted by the Tribunal towards medical expenses is sustained.

18. Thus, the amount of Rs.9,29,384/- granted by the Tribunal is enhanced to Rs.22,26,345/- (Rs.21,49,335/- + Rs.77,000/- + Rs.10,000/- = Rs.22,26,345/-). The enhanced amount shall carry interest at the rate of 7.5 per cent per annum from the date of claim petition till realization. The insured and the insurer of the crime vehicle are jointly and severally liable to pay the compensation, and the same shall be deposited within a period of two months from the date of receipt of a copy of this order. Any amount already deposited by the insurance company shall be given credit it.

19. Thus both the issues framed are answered accordingly in favour of the claimants.

20. The claimants shall pay the deficit court fee.

21. The apportionment of compensation among the claimants, its deposit in nationalized bank and withdrawal shall be as ordered by the Tribunal.

22. Thus, in the result, MACMA.No.1696 of 2014 is dismissed and Cross-Objection No.1 of 2011 is allowed to the extent indicated above.

23. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:15—11—2022
AVS/GV