

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

M.A.C.M.A.No.732 of 2014

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the award and decree, dated 28.11.2008 passed in O.P.No.390 of 2007 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge at Karimnagar (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal.

3. The claimants filed petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- for the death of one Penjarla Gattaiah (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 03.06.2006. It is stated that on 03.06.2006, at 1:00 p.m., while the deceased was going from bus stand to Railway Station side on his bicycle, when he reached near Hanuman temple, the offending vehicle i.e., auto bearing No. AP 15X 1079, owned by respondent No. 1, insured with respondent No. 2, being driven by its driver in a rash and negligent manner, came from Railway Station side and dashed

the cycle from opposite side. As a result, the deceased fell down and became unconscious. After the accident, the auto driver took the deceased in his auto informing the eyewitnesses that he would admit the deceased in the hospital, but however, he threw the deceased on the road to conceal the offence committed by him. On 04.06.2006, at about 8:30 p.m., the claimants watched a news item with the photo of the deceased on T.V. to the effect that on 03.06.2006, at 5:00 p.m., the deceased fell down in intoxication condition, was admitted in the hospital and while undergoing treatment in the Government Hospital, he died. Immediately, the claimant No. 1, wife, went to the hospital and identified the deceased. On 05.06.2006, on the complaint lodged by claimant No.1, police registered a case under Section 174 Cr.P.C., but during the course of investigation, arrested the accused i.e., the driver of the auto, and altered the section of law to that of Section 304-A and 201 IPC and laid the charge sheet as such. According to the claimants, the deceased was aged 35 years, earning Rs.5,000/- per month by doing Hamali profession and therefore, they laid the claim for Rs.5.00 lakhs towards compensation against the respondents under various heads.

4. Before the Tribunal, while respondent No.1 remained ex parte, respondent No. 2 contested the claim petition by filing counter denying all the allegations, including the manner in which the accident occurred and the very involvement of the crime vehicle in the accident. According to the respondent No.2, the deceased died by fall on the road in intoxicated condition.

5. Based on the above pleadings, the following issues are framed before the Tribunal:-

- 1) Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No. AP 15X 1079?
- 2) Whether the petitioners are entitled to recover compensation and if so, to what amount and from whom?
- 3) To what relief?

6. The impugned award discloses that subsequently, the tribunal has framed additional issue to the effect that *whether the petitioners are entitled to recover enhanced compensation of Rs.5,00,000/-?*

7. During trial, on behalf of the claimants, P.Ws.1 to 5 were examined and Exs.A.1 to A. 9 were marked. On behalf of the respondents, R.W.1 was examined and Exs.B.1 and B. 2 were marked.

8. Considering the oral and documentary evidence available on record, the Tribunal dismissed the claim-petition holding that *the deceased died only in intoxication condition by falling on the road but not died with any road traffic accident*. Aggrieved thereby, the claimants filed the present appeal.

9. Heard both sides and perused the record.

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

11. It is the case of the claimants that on 03.06.2006 while the deceased was coming from bus stand to Railway Station on his bicycle, the crime vehicle dashed the auto; that the driver took the deceased in his auto on the pretext of admitting him in the hospital; that he threw the deceased on the road in order to

conceal the crime. According to them, they came to know the death of the deceased in the Government Hospital while watching news article on T.V. Though the wife of the deceased got examined as P.W.1, her evidence is in relation to the profession and income of the deceased but not as to the accident. P.W.2, the eyewitness to the accident, deposed that the accident occurred on 03.06.2006 at about 1:00 p.m. It is his evidence that while himself and another auto driver were going one by one to Railway Station, the driver of the offending vehicle, which was coming behind him, drove the auto negligently and hit the deceased who was coming on cycle; that the deceased fell down, sustained head injury and became unconscious and that the driver of the offending vehicle shifted the deceased to hospital in his auto. So is the evidence of another eyewitness, P.W.3. P.W.5, the Sub-Inspector of Police, deposed as to the registration of crime for the offence under Section 174 Cr.P.C. at the initial stage and its alteration subsequently to that of Section 304-B and 201 IPC, arresting the accused on 14.06.2006 and filing of charge sheet after receipt of Post-Mortem Examination Report to the effect that while the deceased was going to Railway station side on his

cycle and when he reached near Hanuman temple, the offending auto, coming from his opposite direction dashed the deceased, that the driver lifted the deceased for taking him to hospital for treatment, but threw the deceased on the road. The evidence of P.W.4, doctor, is to the effect that the deceased sustained head injury and the cause of death was due to hemorrhage due to head injury. Ex.A.5 is the Post-Mortem Examination Report issued to that effect.

11. In this regard, it is to be noticed 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**¹. In this case, there are eyewitnesses in the form of P.Ws.2 & 3 to establish the involvement of the crime vehicle in the accident. Further, Ex.A.5, Post-Mortem Examination Report discloses that the cause of death of the deceased was on account of haemorrhage due to head injury. After the investigation and based on the eyewitnesses

¹ AIR 2009 SC 2819

statement, the investigating officer, P.W.5 has filed charge sheet against the driver of the offending vehicle. Even though it was canvassed by the Insurance Company that the deceased died by fall on the road in intoxicated condition, nowhere in the Post-Mortem Examination Report, it was mentioned as to the presence of any alcohol substance. When it was the primary opinion that the deceased fell on the road due to intoxicated condition, a chemical analysis for the content of alcohol should have been done. Taking into consideration all the said reasons, the tribunal ought to have held that the deceased died due to the rash and negligent driving of the offending vehicle by its driver. Hence, this Court holds that the accident occurred only due to the rash and negligent driving of the offending vehicle by its driver, which is owned by respondent No. 1 and insured with respondent No. 2.

12. Since this Court has concluded that the death of the deceased was on account of involvement of the crime vehicle and its rash and negligent driving by its driver, now this Court is inclined to determine the compensation based on the evidence adduced before the Tribunal. As seen from the record, no documentary evidence has been adduced by the claimants to

prove that the deceased was earning Rs.5,000/- per month. After all, the profession of deceased was claimed as *Hamali*. In ***Latha Wadhwa vs. State of Bihar***², the Apex Court held that even there is no proof of income and earnings, it can be reasonably estimated minimum at Rs.3,000/- per month for any non-earning member. Therefore, as the deceased was hale and healthy and aged about 35 years, this Court is inclined to take the income of the deceased as Rs.4,500/- per month. Apart from the same, the claimants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***³. Therefore, monthly income of the deceased comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/-). Since there are four dependents, his personal living expenses shall be 1/4th of the said amount, i.e., Rs.1,575/- per month and after deducting the same, the net monthly income that was being contributed to the family comes to Rs.4,725/-. Since the age of the deceased was 35 years at the time of the accident, the appropriate multiplier is '16' as per the decision reported in

² (2001) 8 SCC 197³ 2017 ACJ 2700

***Sarla Verma v. Delhi Transport Corporation and another*⁴.**

Adopting multiplier 16, total loss of dependency comes to Rs.9,07,200 (Rs.4,725 x 12 x 16). That apart, the claimants are also entitled to Rs.77,000/- towards conventional heads as per **Pranay Sethi's** case (supra). In addition thereto, the claimant Nos. 2 & 3, being minor children of deceased, are granted Rs.80,000/- towards parental consortium as per the decision of the Apex Court reported in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others**⁵. Thus, in all, the claimants are entitled to Rs.10,64,200/- with interest at 7.5% per annum.

13. In **Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another**⁶, the Apex Court while referring to **Nagappa Vs. Gurudayal Singh**⁷ held as under:

“It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act,

⁴ (2009) 6 SCC 121

⁵ (2018) 18 SCC 130

⁶ (2011) 10 SCC 756

⁷ 2003 ACJ 12 (SC)

the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.”

14. In view of the Judgments of the Apex Court referred to above, the claimants are entitled to get just compensation even if it is more than what has been claimed originally. Further, since the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration, the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

15. In the result, the appeal is allowed by setting aside the award and decree, dated 28.11.2008 passed in O.P.No.390 of 2007 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar. The appellants/claimants are awarded compensation of Rs.10,64,200/- with interest @ 7.5% per annum. However, in the peculiar circumstances of the case, the amount shall carry interest from 10-02-2014 i.e., the date on which the appeal is admitted, till the date of its realisation. Out of the said compensation, claimant No. 1 is entitled to 30% share; claimant Nos. 2 & 3 are entitled to 25% share each and the claimant No. 4 is entitled to 20% share. Both the respondents are jointly and

severally liable to pay the said amount and they are directed to deposit the same within two months from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective share amounts without furnishing any security. However, the claimants are directed to pay Deficit Court Fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

12.12.2022

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

M.A.C.M.A.No.732 of 2014

DATE:12-12-2022