

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

M.A.C.M.A.No. 645 of 2017

JUDGMENT:

Dissatisfied with the quantum of compensation awarded in the order and decree, dated 15.11.2016 passed in M.V.O.P.No.2120 of 2013 on the file of the Motor Vehicle Accident Claims Tribunal-cum-X Additional Chief Judge, City Civil Court at Hyderabad (for short "the Tribunal") and in exonerating the insurance company, respondent No. 2 herein from the liability of payment of compensation, the appellants/claimants preferred the present appeal.

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

3. The facts, in issue, are as under:

The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.15,00,000/- for the death of one K. Srinivas (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 10.02.2013. It is stated that on the fateful day, while the deceased, along with his friends, was proceeding in an auto, at 1500 hours, when the auto reached near Pati Village outskirts, the offending vehicle i.e., lorry bearing No. AP 24TB 0405, owned by

respondent No. 1 and insured with respondent No. 2, coming from Muthangi to Kolluru, being driven by its driver in a rash and negligent manner at high speed, dashed the auto. The deceased sustained severe injuries and while undergoing treatment at Gandhi Hospital, succumbed to the injuries on 12.02.2013. According to the claimants, the deceased was 25 years, working as School Bus driver in Dr.KKR Goutham Concept School, Nizampet, drawing monthly salary of Rs.9,500/- and thereore, they filed the O.P. claiming compensation of Rs.15.00 lakhs against the respondents.

4. Before the tribunal, while the respondent No. 1 remained ex parte, respondent No. 2, insurance company, filed counter denying the manner in which the accident took place, including the age, avocation and income of the deceased. It was the specific case of the respondent No. 2 that the driver of the offending vehicle was not holding valid driving licence and therefore, no liability can be fastened on it. It is also stated that the quantum of compensation claimed is excessive, baseless and prayed to dismiss the petition.

5. Considering claim, counter and the oral and documentary evidence available on record, the tribunal held that the accident occurred due to the negligent driving of the lorry by its driver and awarded an amount of Rs.9,97,000/- with interest @ 6% per

annum from the date of petition till the date of realization. However, as the driver of the offending vehicle was found to be not holding any valid driving licence, the liability was fixed alone on the respondent No. 1 while exonerating the insurance company. Challenging the quantum of compensation as meagre and challenging the findings of the tribunal in exonerating the insurance company from liability of payment of compensation, the present appeal came to be filed by the claimants.

6. Heard both sides and perused the record.

7. The learned counsel for the claimants *firstly* contended that the tribunal was not right in exonerating the insurance company from the liability of payment of compensation merely because the driver did not produce the licence before the police and in the absence of any evidence adduced by the insurance company by summoning the appropriate authority to prove that the driver was not having valid driving licence, the tribunal ought not to have exonerated the insurance company on mere assumption that the driver was not holding valid driving licence.

8. *Secondly*, on the issue of quantum of compensation, it is contended that although the tribunal has not relied on Ex.A.6, salary certificate, for the reason that the employer, P.W.2, did not

produce proper evidence, and having taken the monthly salary of deceased at Rs.6,000/-, ought to have added 40% thereto, towards future prospects as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹. That apart, though claimant No. 2, father died during the pendency of O.P., the claimant No.1, being the mother of the deceased, ought to have been granted filial consortium of Rs.40,000/- in view of the judgment of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***². It is lastly contended that the interest awarded by the Tribunal at 6% is meagre and the same needs to be enhanced to 7.5% per annum.

9. On the other hand, on the aspect of liability, the learned Standing Counsel for the respondent No.2, Insurance company, contended that after due investigation, police laid the charge sheet against the driver of the offending vehicle for the offence under Sections 304-A IPC and Section 181 of Motor Vehicles Act with a clear finding that he was not holding valid driving licence and therefore, the tribunal has rightly exonerated the insurance company from the liability of payment of compensation. Coming

¹ 2017 ACJ 2700

² (2018) 18 SCC 130

to the quantum of compensation, it is contended that even though the claimants have not established the income of the deceased, the tribunal has taken the income as Rs.6,000/- per month. In fact, the tribunal has erred in adding future prospects at 50%, but considering the nature of job of the deceased, it should be 40% only.

10. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged by either of the respondents. However, based on the contents of the charge sheet, which was filed by the police stating that the driver did not produce any copy of his licence and as he was booked for the offence under Section 181 of Motor Vehicles Act, the tribunal has exonerated the insurance company holding that the driver of the offending vehicle was not holding valid driving licence. It is to be noted that as per Section 149(2) of the Motor Vehicles Act, 1988, heavy burden lies upon the insurer to prove that the driver of the vehicle had no valid driving license at the time of the accident. The evidence of RW-1 does not establish that the driver of the offending vehicle was having a valid and effective driving license as on the date of the accident or not. But the evidence discloses the fact that the driver has been prosecuted for not producing the driving license. In such circumstance and as

the concerned RTA authority was not examined, the evidence of RW-1 is not of much assistance to the insurer in order to establish the fact that the driver of the offending vehicle did not possess a valid and effective driving license at the time of the alleged accident. Even it is not the case of the insurance company that they have issued any notices to the owner in this regard. This evidence of R.W.1 does not come to the aid of the insurer to discharge its primary duty to establish that there was breach of terms of the policy. As per the principles laid down by the Apex Court in **Rukmani and Others V. New India Assurance Co. and Others**³, when the insurer had failed to prove the defence raised in the statement of objections, such a plea cannot be accepted. When the police officer or the records are not summoned from the transport authority to establish the fact that the driver of the offending vehicle was not having a valid and effective driving license, then, under such circumstances, it has to be held that the insurer has failed to discharge its burden. Under these circumstances, the contention of the learned counsel for the appellant/Insurance Company cannot be sustained and it is hereby rejected. Further, the Motor Vehicles Act is a beneficial piece of legislation. Time and again, it has been held by the Apex

³ (1998) 9 SCC 160

Court that trappings of civil and criminal proceedings cannot be applied in a very strict manner. Therefore, in view of the above discussion, this Court is of the opinion that the tribunal was not right in holding that the driver of the offending vehicle was not holding driving licence. Hence, the said findings of the tribunal in this regard are set aside holding that both the respondents are jointly and severally liable to pay the compensation.

11. As regards the quantum of compensation, though the claimants claimed that the deceased was earning Rs.9,500/- per month as school bus driver, in the absence of any documentary evidence adduced by P.W.2, the tribunal has rightly fixed the monthly income of the deceased at Rs.6,000/-. Considering the fact that the deceased was 25 years old at the time of the accident and was driver, the claimants are entitled to addition of 40% towards future prospects to the established income but not 50%, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, the future monthly income of the deceased comes to Rs.8,400/- (Rs.6,000/- + Rs.2,400/-). From this, 50% is to be deducted towards personal expenses of the deceased following **Sarla Verma v. Delhi Transport Corporation**⁴ since he was a bachelor. After deducting 50% therefrom towards his

⁴ 2009 ACJ 1298 (SC)

personal and living expenses, the contribution of the deceased to the family would be Rs.4,200/- per month. Since the age of the deceased was 25 years at the time of the accident, the appropriate multiplier is '18' as per the guidelines laid down by the Apex Court in **Sarla Verma** (supra). Adopting multiplier '18', the total loss of dependency would be Rs.4,200/- x 12 x 18 = Rs.9,07,200/-. That apart, the claimants are entitled to Rs.33,000/- under the conventional heads as per the decision of the Apex Court in **Pranay Sethi** (supra). Further, under the head of filial consortium, the claimant No.1, being mother of the deceased, is entitled to Rs.40,000/- as per the decision of the Apex Court in **Nanu Ram @ Chuhru Ram** (supra). Thus, in all, the claimants are entitled to Rs.9,80,200/-.

12. Insofar as the interest awarded by the Tribunal is concerned, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**⁵, the claimants are entitled to interest @ 7.5% per annum on the compensation awarded by the Tribunal from the date of petition till realization but not 6% as was awarded by the Tribunal.

⁵ 2013 ACJ 1403 = 2013 (4) ALT 35

13. Accordingly, M.A.C.M.A. is allowed in part. The claimants are granted compensation of Rs.9,80,200/- to be paid by both the respondents jointly and severally. The compensation amount shall carry interest at 7.5% p.a. from the date of passing of order by the Tribunal till the date of realization. The amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the entire compensation is two months from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw their respective share amounts. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

22.11.2022
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THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No. 645 of 2017

DATE: 22-11-2022