

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.Nos.350 of 2016 and 837 of 2016

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.350 of 2016 filed by the claimants seeking enhancement of compensation and M.A.C.M.A.No.837 of 2016 filed by the respondent No.2-The Oriental Insurance Company Limited challenging the quantum of compensation, are directed against the very same award and decree, dated 10.12.2015 made in M.V.O.P.No.482 of 2013 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge at Warangal (for short “the Tribunal”).

2. For the sake of convenience, hereinafter the parties will be referred to as per their array 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 against the respondents 1 and 2, claiming compensation of Rs.8,00,000/- for the death of one Bayyanna Somaiah (hereinafter referred to as “the deceased”), who died in

the accident that occurred on 18.05.2012. According to the claimants, on 18.05.2012 in the morning hours the deceased and others left their village to go to Thorrur to attend the mason work till evening. After completing the work, the deceased left Thorrur on a motorcycle bearing No. AP 29 AE 3202. While so, the driver of lorry bearing No. AP 16 X 2511 parked the vehicle on the main road in negligent manner without taking precautionary measures like switching on parking lights and indicators and as such, the deceased went and dashed the parked lorry at the outskirts of Velikatte village at about 20-30 hours. Due to which, the deceased sustained fatal injury and died instantaneously. According to the petitioners, the deceased was a mason and doing work at Mandal Headquarters with and earning Rs.10,000/- per month. Therefore, they are seeking compensation of Rs.8,00,000/- against the respondent Nos.1 and 2, who are owner and insurer of the lorry bearing No. AP 16 X 2511 jointly and severally. Respondent Nos.3 and 4 are parents of the deceased. However, respondent No.4 died during pendency of petition.

4. Before the Tribunal, while the respondent Nos.1, 3 and 4 remained ex parte; respondent No.2 Insurance Company filed counter denying the averments made in the claim-petition including the manner in which the accident took place, age, avocation and income of the deceased. It is further contended that the deceased along with two others travelled on his motorcycle and lost control with rash and negligent driving at high speed and thereby dashed the stationed lorry resulting the accident and that the compensation claimed is excessive and exorbitant and therefore, prayed to dismiss the claim-petition.

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

1. *Whether the accident had occurred on 18.05.2012 at about 20-30 hours at Vellikatta village, Thorrur Mandal, Warangal District, due to rash and negligent driving of the driver of lorry bearing No. AP 16 X 2511?*
2. *Whether the petitioners are entitled to compensation and if so, to what amount and from whom?*
3. *To what relief?*

6. In order to prove the issues, PWs.1 to 3 were examined and Exs.A1 to A6 were marked on behalf of the petitioners. On behalf of the respondents, the chief affidavit of RW-1 has been filed but the said evidence has been eschewed on his representation that he is unable to attend the court due to transfer and RW-2 was examined and Exs.B1 and B2 got marked.

7. After considering the oral and documentary evidence available on record, the Tribunal fixed the negligence on both the driver of the lorry and the rider of the motorcycle equally and awarded the total compensation of Rs.7,45,625/- with proportionate costs and interest at 7.5% per annum from the date of filing of the petition till the date of deposit to be paid by the respondent Nos.1 and 2 jointly and severally.

8. Heard both the learned counsel and perused the material available on record.

9. Learned Counsel for the claimants has submitted that though the claimants established that the accident occurred due to the negligent parking of the offending lorry on the main road, the

tribunal has erroneously fixed the culpability for the accident on both the vehicles equally and as such, the Tribunal has awarded very meager amount.

10. The learned Standing Counsel for the respondent No.2- Insurance Company contended that the accident occurred due to the rash and negligent driving of the rider of the motorcycle and not due to the parking of the lorry. Further the Tribunal added future prospects at 50% of his actual income instead of 40% of his actual income. It is further contended that the compensation granted by the tribunal is excessive and prays to set aside the Order passed by the Tribunal.

11. With regard to the manner of accident, PW-1 reiterated the petition averments. PW-2 who is the eyewitness to the accident deposed that on 18.05.2012 in the morning hours he being the pillion rider and the deceased Bayyana Somaiah as a rider of motorcycle bearing No. AP.29.AE.3203 went to Thorrur and attended the mason work and after completion of their work, they left Thorrur and at that time lorry bearing No. AP 16 X 2511 was parked in negligent manner without putting any parking lights and

indicators on the main road at the outskirts of Velikatte village and as such, at about 20-30 hours their vehicle dashed the stationed lorry and the deceased sustained fatal injuries and died on the spot. PW-3 who is the then Investigation Officer also stated that according to the charge sheet, the lorry was parked in a place which was not meant for parking that too without taking precautionary measures like switching on parking lights or putting stones. Further after thorough investigation police laid charge sheet against the respondent No.1 i.e., driver of the lorry. Under these circumstances, this Court is of the considered view that the accident occurred only due to the negligence of the lorry driver and there is no rash and negligence on the part of the motorcycle driver i.e., the deceased. Therefore, the tribunal has erred in fixing the liability against both the vehicles equally.

12. With regard to the quantum of compensation, according to the petitioners, the deceased was a mason and a member of Andhra Pradesh Building and other construction Workers Welfare Board and as such, considering the avocation of the deceased as a Mason, the tribunal had rightly taken the actual income of the deceased at

Rs.6,500/- per month. But the tribunal erred in adding the future prospects at 50% of his income instead of 40%. Therefore, the claimants are entitled for adding 40% towards future prospects to the established income, as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹. Therefore, future monthly income of the deceased comes to Rs.9,100/- (Rs.6,500/- + Rs.2,600/- being 40% thereof). Since the deceased left as many as three persons as the dependants, 1/3rd of his income is to be deducted towards his personal and living expenses. Then the contribution of the deceased would be Rs.6,067/- (9,100 – 3033 = 6,067) per month. Since the deceased was aged about 38 years at the time of accident, the appropriate multiplier in light of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***² would be “15”. Then the loss of dependency would be Rs.6,067/- x 12 x 15 = **Rs.10,92,060/-**. In addition thereto, under the conventional heads, the claimants are granted **Rs.77,000/-** as per the decision of the Apex Court in ***Pranay Sethi*** (supra). Further the petitioner No.3 who is minor

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

son of the deceased is entitled to filial consortium at **Rs.40,000/-** and respondent No.3 who is father of the deceased is entitled for parental consortium at **Rs.40,000/-** as per the **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram³**. Thus, in all the claimants are entitled to **Rs.12,49,060/-**.

13. Accordingly, M.A.C.M.A.No.350 of 2016 is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.7,45,625/- to **Rs.12,49,060/-**. The enhanced amount shall carry interest at 7.5% per annum from the date of petition till the date of realization, payable by respondent Nos.1 and 2 jointly and severally. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the compensation is one month from the date of receipt of a copy of this order. The claimants shall pay the deficit court fee and on such payment of court fee only, the claimants and respondent No.3 are entitled to withdraw the compensation without furnishing any security. The M.A.C.M.A.No.837 of 2016 filed by the insurance company stands partly allowed to the extent of adding 40% towards future

³ 2018 Law Suit (SC) 904

prospects of the deceased instead of 50% as was added by the tribunal while computing the quantum of compensation. There shall be no order as to costs.

14. Miscellaneous petitions, if any, pending shall stand closed.

M.G.PRIYADARSINI,J

27.12.2022

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