

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.593 of 2014

JUDGMENT:

Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Special Sessions judge for trial of cases under SCs and STs (POA) Act 1989-cum-Additional District Judge, Khammam, in M.A.T.O.P.No.454 of 2010 dated 7.10.2010, the claimants have filed the present appeal.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. According to the petitioners, on 20-11-2009 at 20-00 hours, the deceased Kondi Sayamma along with others started from their village to go to Bhadrachalam in auto bearing No. AP.20.W.509 and on the way when the auto reached near the outskirts of Jaggaram, one bus bearing No. AP.28.Z.2867 came in a rash and negligent manner with high speed and dashed against the said auto, due to which the deceased received fatal injuries and died on the spot. According to the petitioners, the deceased was aged 39 years, and earning Rs.6,000/- per

month as a coolie. Thus, the petitioners are claiming compensation of Rs.6,00,000/- under various heads.

4. Respondent No.2 filed counter disputing the manner in which the accident occurred, age, avocation and income of the deceased. It is further contended that the accident occurred due to the rash and negligent driving of the driver of the auto and as such, the driver, owner and insurer of the auto are necessary parties to this petition and in their absence, the petition is not maintainable and that the claim is excessive. Respondent No.1 filed memo adopting the counter filed by respondent No.2.

5. In view of the above pleadings, the Tribunal raised the following issues:

- 1) Whether the accident took place due to rash and negligent driving of the APSRTC bus bearing No. AP.28.Z.2867 by its driver?
- 2) Whether the petitioners are entitled to claim compensation, if so, to what amount and from which of the respondents?
- 3) To what relief?

6. In order to prove the issues, on behalf of the petitioners, PWs.1 and 2 were examined and got marked Exs.A-1 to A-6. On behalf of respondent No.2, RW-1 was examined and no documents were marked.

7. After considering the oral and documentary evidence available on record, the Tribunal awarded an amount of Rs.3,08,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of deposit to be paid by the respondents 1 and 2.

8. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the respondent No.2-Corporation. Perused the material available on record.

9. The learned counsel for the appellants-claimants has submitted that although the claimants established the fact that the death of the deceased-Kondi Sayamma was caused in a motor accident, the Tribunal awarded meager amount.

10. The learned Standing Counsel appearing on behalf of respondent No.2-Corporation sought to sustain the impugned award of the Tribunal contending that the Tribunal after appreciating the evidence

on record, has awarded adequate compensation and the same needs no interference by this Court.

11. With regard to the manner of accident, the tribunal after considering the evidence of PW-2, who stated that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, coupled with the documentary evidence available on record, rightly held that the accident occurred due to the rash and negligent driving of the driver of offending bus which resulted the death of the deceased Kondi Sayamma.

12. With regard to the quantum of compensation, according to the petitioners, the deceased was a labourer and earning Rs.6,000/- per month. However, since the petitioners did not produce any oral or documentary evidence to prove the income of the deceased and the accident occurred in the year 2009, the income of the deceased can be taken at Rs.5,000/- per month. As per the postmortem examination report, the age of the deceased was 45 years. Further, in light of the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimants are

¹ 2017 ACJ 2700

entitled to future prospects @ 25% of his income, since the deceased was aged 45 years. Then it comes to Rs.6,250/- ($5,000 + 1,250 = 6,250/-$). From this, 1/4th of the actual income is to be deducted towards personal expenses of the deceased following ***Sarla Verma v. Delhi Transport Corporation***² as the dependants are five in number. After deducting 1/4th of the amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.4,688/- ($6,250 - 1,562 = 4,688/-$) per month. Since the deceased was 45 years by the time of the accident, the appropriate multiplier is '14' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation*** (supra). Adopting multiplier '14', the total loss of dependency would be Rs.4,688/- x 12 x 14 = **Rs.7,87,584/-**. In addition thereto, the claimants are also entitled to **Rs.77,000/-** under the conventional heads as per **Pranay Sethi's** (supra). Thus, in all the claimants are entitled to **Rs.8,64,584/-**.

13. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the driver of the RTC bus and as such, respondent Nos.1 and 2 are liable to pay compensation.

² 2009 ACJ 1298 (SC)

14. In the result, the M.A.C.M.A. is allowed by granting compensation amount of **Rs.8,64,584/-** to the petitioners with costs and interest at 7.5% p.a. from the date of petition till the date of realization, to be payable by the respondent Nos.1 and 2. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. The amount of compensation shall be apportioned among the claimants in the ratio as ordered by the Tribunal. The claimants shall pay deficit Court fee on the enhanced compensation, since the initial claim was for Rs.6,00,000/-. On such payment of court fee only, the claimants are entitled to withdraw the amount. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

28.12.2022
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