

HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.216 of 2014

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 14.05.2010 passed in O.P.No.1881 of 2008 on the file of the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short “the Tribunal”), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

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

3. Brief facts of the case are that the claimants, who are the wife and daughter of one P.Narasimha (hereinafter referred to as “the deceased”) filed a petition, claiming compensation of Rs.6,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 04.08.2008. It is stated that on 04.08.2008 while the deceased was proceeding on his scooter and when he reached in front of Manneguda Petrol Pump, Hayathnagar Mandal, Cyberabad, one Mahendra

Max bearing No.AP 28 N 7403 driven by its driver in a rash and negligent manner at high speed and dashed the scooter, due to which the deceased fell down, sustained injuries and died on the spot. It is stated that prior to the accident, the deceased was hale and healthy and was working as Lorry Driver and earning Rs.5,000/- per month. On account of death of the deceased, the petitioners lost their source of income. The 1st respondent being the owner and the 2nd respondent being insurer of the offending vehicle are jointly and severally liable to pay compensation.

4. Before the Tribunal, the 1st respondent remained *ex parte*.

5. The 2nd respondent filed counter denying the averments in the petition including the manner in which the accident took place, age, income and avocation of the deceased. It is also stated that the accident occurred due to the negligence of the deceased and as such the 2nd respondent is not liable to pay the compensation.

6. Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the deceased died in the accident on 04.08.2009 due to rash and negligent driving of driver of Mahendra Max bearing No.AP 4U 4016?
- 2) Whether the petitioners are entitled to any compensation? If so from whom?
- 3) To what relief?

7. During trial, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked.

8. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Mahendra Max vehicle and accordingly awarded an amount of Rs.3,74,000/- with interest @ 7.5 % per annum from the date of petition till the date of realization to be paid by the respondents. Challenging the same, the present appeal has been filed by the claimants seeking enhancement.

9. Learned Counsel for the claimants would submit that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimants are also entitled to the future prospects and also Rs.77,000/- under conventional heads.

10. Learned Standing Counsel for the 2nd respondent would submit that the issue with regard to the future prospects has been considered by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (1 supra) and as per that judgment, the claimants are entitled 40% amount towards future prospects. It is further submitted that the compensation towards non-pecuniary damages has been rightly granted by the Tribunal and the same need not be enhanced.

11. 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 the respondents.

12. Insofar as the quantum of compensation is concerned, the record reveals that the deceased was aged about 38 years and

¹ 2017 ACJ 2700

was working as Lorry Driver. Therefore, considering the age and avocation of the deceased, this Court inclined to fix the income of the deceased at Rs.4,000/- 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 **Pranay Sethi** (1 supra). Therefore, monthly income of the deceased comes to Rs.5,600/- (Rs.4,000/- + Rs.1,600/-). From this, 1/3rd is to be deducted towards personal and living expenses of the deceased. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.3,733/- per month. Since the age of the deceased was 38 years at the time of the accident, the appropriate multiplier is '15' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation and another**². Adopting multiplier 15, his total loss of earnings would be Rs.3,733/- x 12 x 15 = Rs.6,71,940/-. The claimants are also entitled to Rs.77,000/- towards loss of estate, funeral expenses and loss of consortium, as per **Pranay Sethi's** case (1 supra). Thus, in all the claimants are entitled to Rs.7,48,940/-.

² (2009) 6 SCC 121

13. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.6,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

14. In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***³, the Apex Court while referring to ***Nagappa Vs. Gurudayal Singh***⁴ 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, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.”

15. In view of the Judgments of the Apex Court referred to above, the claimants are entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the

³ (2011) 10 SCC 756

⁴ 2003 ACJ 12 (SC)

claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

16. Accordingly, the M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.3,74,000/- to Rs.7,48,940/-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization, payable by respondents 1 and 2 jointly and severally. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. 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.

JUSTICE G. SRI DEVI

23.06.2022
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