

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.2317 of 2014

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge-cum-Special Sessions Judge for SCs/STs (POA) Act Cases, Nalgonda in O.P. No.339 of 2008 dated 07.12.2010, the present appeal is filed by the claimants.

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

3. Appellants are the petitioners in the main petition. According to the petitioners, on 8.3.2008 at about 9-00 p.m., the deceased Chinthakayala Shankar was returning from Konda Mallepally to his native place in the auto bearing No. AP.24.W.5374 and when the said auto reached near Indian Oil Petrol bunk on Konda Mallepally to Sagar road, one DCM bearing No. AP.09.T.6114 came from Konda Mallepally side in a rash and negligent manner with high speed and dashed the auto, in which the deceased was traveling. Due to which, the deceased Shankar received grievous injury on his head and other parts of the

body. Immediately he was taken to Government Hospital, Deverakonda, but he was succumbed to the injuries on the same night. According to the petitioners, the deceased was aged 20 years, working as Mason and used to earn Rs.3,500/- per month. Thus the petitioners are claiming compensation of Rs.4,00,000/- against the respondent Nos.1 and 2, who are owner and insurer of the lorry jointly and severally.

4. Respondent No.1 remained ex parte.
5. 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 claim is highly excessive.
6. In view of the above pleadings, the Tribunal raised the following issues:
 - 1) *Whether the deceased Chinthakayala Shankar S/o Venkateshwarlu @ Venkatesham died in the accident due to rash and negligent driving of the driver of the DCM van bearing No. AP.09.T.6114?*
 - 2) *Whether the claimants are entitled to claim compensation, if so, to what amount and from whom?*
 - 3) *To what relief?*

7. 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, no witnesses were examined and Ex.B1 was marked.

8. On considering the oral and documentary evidence on record, the Tribunal has awarded an amount of Rs.1,82,000/- towards compensation to the appellants-claimants along with proportionate costs and interest @ 7.5% per annum from the date of filing of the petition till the date of realization against the respondent Nos.1 and 2 jointly and severally.

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

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

11. The learned Standing Counsel appearing on behalf of respondent No.2-Insurance Company sought to sustain the impugned award of the Tribunal contending that the Tribunal after considering all aspects has

awarded adequate compensation and the same needs no interference by this Court.

12. With regard to the manner of accident, there is no dispute. However, considering the evidence of PWs.1 and 2 coupled with the documentary evidence available on record, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the offending DCM Van bearing No. AP 09 T 6114. Now another dispute raised by the counsel for Insurance Company in the present appeal is with regard to the quantum of compensation.

13. Coming to the quantum of compensation, according to the petitioners, deceased-Shankar was aged 20 years and working as a Mason and was getting Rs.3,500/- per month. However, as there is no record to prove his income, the Tribunal has taken the actual income of the deceased at Rs.2,000/- per month, which appears to be too meager. Hence, considering the avocation of the deceased and the accident is of the year 2008, the income of the deceased can be taken at Rs.3,500/- per month. In light of the principles laid down by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others*¹,

¹ 2017 ACJ 2700

the claimants are entitled to future prospects @ 40% of his income, since the deceased was aged 20 years. Then it comes to Rs.4,900/- ($3,500 + 1,400 = 4,900/-$). From this, 50% is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation*² as the deceased was a bachelor. After deducting 50% of the amount towards his personal and living expenses, the contribution of the deceased to his family would be Rs.2,450/- per month ($4,900 - 2,450 = 2,450/-$). Since the deceased was 20 years by the time of the accident, the appropriate multiplier is '18' as per the decision reported in *Sarla Verma v. Delhi Transport Corporation* (supra). Adopting multiplier '18', the total loss of dependency would be $Rs.2,450 \times 12 \times 18 = \text{Rs.5,29,200/-}$. In addition thereto, the claimants are also entitled to **Rs.33,000/-** under the conventional heads as per *Pranay Sethi's* (supra). Further the petitioner Nos.1 and 2 who are parents of the deceased are also entitled to filial consortium at **Rs.40,000/- each** as per the *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram*³. Thus, in all the claimants are entitled to **Rs.6,42,200/-**.

14. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,82,000/- to

² 2009 ACJ 1298 (SC)

³ 2018 Law Suit (SC) 904

Rs.6,42,200/-. The enhanced amount shall carry 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 jointly and severally. 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 appellants-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.4,00,000/-. 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

26.12.2022

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