

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 1515 of 2015

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Courts, Hyderabad in M.V.O.P. No.1577 of 2011, dated 30.06.2014, 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. According to the petitioners, on 23.03.2011 the deceased G.Rajan and his wife Jani have started on a motorcycle from ECIL X roads in order to go to Chakripuram and on the way at about 23-15 hours, when they reached near Kushaiguda Bus stop, one DCM Van bearing No. AP 10 W 1885 (Old registration No. MH 43 E 1458) being driven by its driver came from opposite direction in a rash and negligent manner at high speed and dashed their motorcycle. Consequently, the deceased and his wife fell down and sustained grievous injuries on vital parts of the body and while they were being shifted to Gandhi Hospital, Secunderabad, the deceased G.Rajan succumbed to the injuries. According to the petitioners, the deceased was

aged 40 years and earning Rs.6,000/- per month as a plumber. Thus the petitioners are claiming compensation of Rs.9,00,000/- against the respondent Nos.1 and 2, who are owner and insurer of the said DCM van.

4. Respondent No.1 remained exparte; Respondent No.2 filed counter disputing the manner of accident, age, avocation and income of the deceased. It is further contended that the compensation claimed by the petitioners is excessive.

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

6. Vide aforesaid order, the Tribunal has awarded an amount of Rs.10,36,250/- towards compensation to the appellants-claimants against the respondents along with costs and interest @ 7.5% per annum from the date of petition till the date of deposit, as against the claim of Rs.9 lakhs with a further direction that the respondent No.2 is entitled to recover the compensation from respondent No.1.

7. The learned counsel for the appellants-claimants has submitted that although the claimants, by way of evidence of P.Ws.1 and 2 and Exs.A.1 to A.5, established the fact that the death of the deceased-G.Rajan was caused in a motor accident, the Tribunal awarded meager amount.

8. 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 has awarded reasonable compensation and the same needs no interference by this Court.

9. With regard to the manner of accident, learned counsel for the respondent No.2-Insurance Company submitted that there is triple riding at the time of accident and as such, contributory negligence may be taken. The Apex Court in ***“Mohammed Siddique and others vs. National Insurance Company Limited and others in Civil Appeal No.79 of 2020¹, held as under:***

“The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one

person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence.”

In the instant case, except the evidence of PW.2 eyewitness to the accident coupled with documentary evidence available on record which shows that the accident occurred due to rash and negligent driving of the driver of DCM Van bearing No. AP 10 W 1885, there is no other evidence to show that the wrongful act on the part of the rider of the motorcycle. Therefore, considering the evidence of PWs.1 and 2 coupled with the

documentary evidence the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of the DCM Van bearing No. AP 10 W 1885.

10. With regard to the quantum of compensation is concerned, learned counsel for the appellants submitted that the deceased is a plumber and was earning Rs.6,000/- per month. A perusal of the inquest report and charge sheet discloses that the deceased was a plumber. Therefore, considering the age and avocation of the deceased, the income of the deceased can be taken at Rs.6,000/- per month. Further, in light of the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***², the claimants are also entitled to the future prospects and since the deceased was aged about 40 years at the time of accident, 40% of the income is added towards future prospects. Then it comes to Rs.8,400/- (6,000 + 2,400 = 8,400). Since the deceased left as many as four persons as the dependants, 1/4th of his income is to be deducted towards his personal and living expenses. Then the contribution of the deceased would be Rs.6,300/- (8,400 – 2,100 = 6,300) per month. Since the deceased was aged about 40 years at the

² 2017 ACJ 2700

time of accident, the appropriate multiplier in light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**³ would be “15”. Then the loss of dependency would be Rs.6,300/- x 12 x 15 =**Rs.11,34,000/-**. 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 Nos.2 and 3 who are minor children 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**⁴. Thus, in all, the petitioners are entitled for **Rs.12,91,000/-**.

11. With regard to the liability, it is further contended by the appellant-Insurance Company that the driver of the offending vehicle was not having valid driving license and the police also filed charge sheet against the driver of the offending vehicle for the offence under Section 181 of the Motor Vehicles Act. 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. Though the

³ 2009 ACJ 1298 (SC)

⁴ 2018 Law Suit (SC) 904

respondent No.2 filed Ex.B2 copy of notice issued to the respondent No.1 and Ex.B3 office copy of un-served registered post, which was issued to respondent No.1, as per the principles laid down by the Apex Court in [RUKMANI AND OTHERS v. NEW INDIA ASSURANCE CO. AND OTHERS](#)⁵, 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. It has been time and again held that trappings of civil and criminal proceedings cannot be applied in a very strict manner. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

⁵ (1998) 9 SCC 160

12. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.10,36,250/- to **Rs.12,91,000/-**. 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 respondents jointly and severally. The amount of compensation shall be apportioned among the appellants-claimants in the ratio as ordered by the Tribunal. The amount shall be deposited within a period of 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 deficit court fee only, the claimants are entitled to withdraw the compensation awarded to them without furnishing any security. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

29.11.2022
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