

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.453 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 25.06.2014 passed in M.V.O.P.No.1444 of 2012 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the appellants 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, minor son and mother of one Esarapu Srinivas (hereinafter referred to as "the deceased") filed a petition, claiming compensation of Rs.15,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 25.03.2012. It is stated that on 25.03.2012 while the deceased and another were proceeding on Motorcycle bearing No.AP 29 TQ TR 2859 towards

Bommala Ramaram and when they reached near Rice Mill, Naginenipally Village, one Motorcycle bearing No.AP 24 AM 4747 being driven by its rider in rash and negligent manner at high speed without following traffic rules, lost the control over the said motorcycle and dashed the motorcycle of the deceased. As a result of which, the deceased has sustained injuries and immediately he was shifted to Osmania General Hospital, Hyderabad and while undergoing treatment he succumbed to injuries in the said hospital on 28.03.2012. The Police, Bommalararmarm Police Station, registered a case in Crime No.24 of 2012 for the offence punishable under Section 304-A of I.P.C. against the rider of the motorcycle and took up the investigation. It is stated that prior to the accident, the deceased was hale and healthy and was running a Pan shop and also doing Real Estate business under Name and Style of M/s. Sri Sai Pan Shop Real Estate Consultant Kondamadugu Cross Road, Bibinagar Mandal, by engaging an employee paying an amount of @ Rs.6,000/- per month towards salary and used to earn more than Rs.20,000/-

per month. Since the accident occurred due to the rash and negligent driving of the rider of the motorcycle, the claimants laid the claim-petition against respondent Nos.1 and 2, who are the owner and insurer of the said motorcycle bearing No.AP 24 AM 4747, respectively.

4. Before the Tribunal, respondent No.1 remained *ex parte*.

5. Respondent No.2, 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 further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

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

- 1) Whether the deceased died in the accident on 25.03.2012 due to the rash and negligent driving of the driver of Motorcycle bearing No.AP 24 AM 4747?

- 2) Whether the petitioners are entitled to pay any compensation? If so, to what amount and from whom?
- 3) To what relief?

7. During trial, on behalf of the claimants, P.Ws.1 to 4 were examined and Exs.A1 to A9 were marked. On behalf of the respondents, R.W.1 was examined and Exs.B1 and B2 were marked.

8. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the rider of the motorcycle bearing No.AP 24 AM 4747 and accordingly awarded an amount of Rs.11,35,000/- with interest @ 7.5 % per annum from the date of petition till the date of realization to be paid by the respondent Nos.1 and 2 jointly and severally.

9. Heard both sides and perused the material available on record.

10. The learned Counsel for the claimants submitted that though the claimants have proved that the deceased was earning Rs.20,000/- per month by producing the oral

evidence of P.Ws.3 and 4 and documentary evidence i.e., Ex.A6-Trade Licence, the Tribunal erred in fixing the income of the deceased at Rs.4,500/- per month while calculating the loss of earnings.

11. Learned Standing Counsel for the 2nd respondent would submit that the Tribunal erred in awarding Rs.3,25,000/- under conventional heads and the claimants are entitled to only Rs.77,000/- under conventional heads as per the law laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra).

12. There is no dispute regarding the rash and negligence of the rider of the motor cycle. As stated above the claimants have preferred appeal only for quantum of compensation. Insofar as the quantum of compensation is concerned, as per Ex.A6, the deceased was doing business under the name and style M/s. Sri Sai Pan Shop and Real Estate Consultant. Considering the age and avocation of the deceased, this Court is inclined to fix the

income of the deceased at Rs.7,000/- per month. Since the deceased was aged about 35 years, the claimants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.9,800/- (Rs.7,000/- + Rs.2,800/-). Since there are 3 dependants/family members of the deceased, the deduction towards personal and living expenses shall be at the rate of 1/3 of the said amount, i.e., Rs.6,533/- per month. Since the age of the deceased was 37 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**¹. Adopting multiplier 15, his total loss of earnings would be Rs.6,533/- x12 x15 = Rs.11,75,940/-. As rightly pointed by the learned counsel for the respondent that the Tribunal erred in awarding Rs.3,2500 under conventional heads. As per **Pranay Sethi's** case (supra) the claimants are entitled to Rs.77,000/- towards conventional heads and as per the

¹ (2009) 6 SCC 121

judgment in case of **Magma General Insurance Company Limited v. Manu Ram Alias Chururu Ram and others**², the 2nd respondent/claimant, who is the son of the deceased is granted an amount of Rs.40,000/- towards loss of parental consortium. Thus, in all the claimants are entitled to Rs.12,92,940/-.

13. Accordingly, the M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.11,35,000/- to Rs.12,92,940/-. 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. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

² (2018) 18 SCC 130

12.10.2022
VSL/BB

