HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.72 of 2016

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-X Additional Chief Judge, City Civil Courts, Hyderabad in M.V.O.P. No.1974 of 2013, dated 29.10.2015, 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 5.3.2013 at about 10-00 hours the deceased P.Balakrishna was driving the motorcycle bearing No. AP 09 BB 7233 and was going to Thimmaipally village from Yadgarpally village along with his wife and when he was near Thimmaipally turning point, the Tipper lorry bearing No. AP 29 TB 5616 being driven by its driver came from opposite direction in a rash and negligent manner with high speed and hit his motorcycle. Due to which, the deceased and his wife fell down on road and the deceased died instantaneously and

his wife received grievous injuries. Immediately she was shifted to Raghavendra Multi Specialty Hospital, ECIL X Road, Hyderabad. According to the petitioners, the deceased was aged 28 years and owner cum driver of goods carriage and earning Rs.10,000/- per month. Thus the petitioners are claiming compensation of Rs.15,00,000/- against the respondent Nos.1 and 2, who are owner and insurer of the offending vehicle.

4. Respondent No.1 remained ex parte; 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. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident took place due to the rash and negligent driving of the Tipper bearing No. AP 29 TB 5616 causing death of P.Balakrishna?
2. Whether the petitioner is entitled to any compensation, if so, from whom?
3. To what relief?

6. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the respondent No.2-The New India Assurance Company Limited. Perused the material available on record.

7. Vide aforesaid order, the Tribunal has awarded an amount of Rs.8,37,000/- towards compensation to the appellants-claimants against the respondents herein who are owner and insurer of the offending vehicle, jointly and severally, along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of deposit, as against the claim of Rs.15 lakhs.

8. The learned counsel for the appellants-claimants has submitted that although the claimants, by way of evidence of P.W.1 and Exs.A.1 to A.10, established the fact that the death of the deceased-P.Balakrishna was caused in a motor accident, the Tribunal awarded meager amount.

9. The learned Standing Counsel appearing on behalf of respondent No.2 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.

10. Admittedly, there is no dispute with regard to the manner of accident and the involvement of the offending vehicle i.e., Tipper bearing No. AP 29 TB 5616. However, the Tribunal after evaluating the evidence of PW.1 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 the offending vehicle. Now the only dispute is enhancement of compensation.

11. With regard to the quantum of compensation is concerned, according to the petitioners, the deceased was owner cum driver of goods carriage auto and earning Rs.10,000/- per month. Ex.A8 Registration Certificate of the auto of the deceased. Further Exs.A6 and A7 shows that the deceased was holding LMV Non-transport license and as such, the Tribunal has taken the income of the deceased taken at Rs.4,000/- per month, which is very

less. 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***[1]**,** the claimants are also entitled to the future prospects and since the deceased was aged about 26 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 26 years at the time of accident, the appropriate multiplier in light of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***[2] would be "17". Then the loss of dependency would be Rs.6,300/- x 12 x 17 =**Rs.12,85,200/-.** In addition thereto, under the

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[1] 2017 ACJ 2700
[2] 2009 ACJ 1298 (SC)

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 2 who are minor children of the deceased are also entitled to filial consortium at **Rs.40,000/- each** as per **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram's case[3].** Thus, in all, the petitioners are entitled for **Rs.14,42,200/-**.

12. With regard to the liability, Ex.B1 shows that the vehicle is a transport vehicle and Ex.B2 shows that the driver of the Tipper was not having transport vehicle license on the date of accident. The question as to whether the driver of the vehicle in question holding licence to drive non-transport vehicle was authorised to drive transport vehicle, is no longer *res integra* in view of the judgment in the case of ***Mukund Dewangan vs. Oriental Insurance Company Limited and others[4]***, wherein the Apex Court held that "the mere fact that the driver who possessed a

[3] 2018 Law Suit (SC) 904
[4] (2016) 4 SCC 298

licence to drive the light motor vehicle did not possess a licence to drive heavy transport vehicle by itself would not be sufficient to hold that the insurance company would be absolved of its liability to pay compensation"**.**

13. In view of the principles laid down by the Apex Court in the judgment referred to above, the Insurance Company is liable to pay the compensation.

14. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.8,37,000/- to **Rs.14,42,200/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of deposit. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation. 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. On such deposit of compensation amount by the respondents, the claimants are at liberty to withdraw the

same without furnishing any security. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

25.11.2022
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