

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.2975 of 2019

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Courts, Hyderabad in M.V.O.P. No.2164 of 2016, dated 18.03.2019, 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 11-06-2016 at about 4-15 p.m. the deceased Ajay Datta being pillion rider went along with his friend Pintu Kumar Ramani on Activa vehicle bearing No. AP 09 AR 5285 to Rytu Bazar at Mehdipatnam to purchase mangoes for his master Dilip Kumar in whose house, the deceased was working as a cook and after purchasing the same, both of them were returning home at Banjara Hills and when they reached near Orange Honda Showroom, Masabtank, one DCM bearing No. TS 10 UIA 0506 suddenly took the vehicle to left side in a rash and negligent manner and hit the vehicle of the deceased, due to which, the deceased fell down on the road and came under the rear wheels of the DCM and died on the

spot. The rider of the vehicle also fell down and sustained injuries and the vehicle was totally damaged. According to the petitioners, the deceased was aged 32 years, earning Rs.10,000/- towards salary by working as a Cook under Dilip Kumar. Thus the petitioners are claiming compensation of Rs.17,00,000/- against the respondent Nos.1 to 3, who are owner, insurer and driver of the offending vehicle.

4. Respondent No.1 filed counter denying the averments of the petition and further contended that the DCM was insured with the respondent No.2 as on the date of accident and therefore, prays to dismiss the petition.

5. 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.

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

1. Whether the deceased died in the road accident occurred on 11.6.2016 due to rash and negligent driving of the driver of DCM bearing No. TS 10 UIA 0506?

2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom?
3. To what relief?

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

8. Vide aforesaid order, the Tribunal has awarded an amount of Rs.9,77,200/- towards compensation to the appellants-claimants against the respondents herein who are owner, insurer and driver of the offending vehicle, jointly and severally, along with proportionate costs and interest @ 7.5% per annum from the date of petition till realization, as against the claim of Rs.17 lakhs.

9. 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.10 and Ex.X1, established the fact that the death of the deceased-Ajay Datta was caused in a motor accident, the Tribunal awarded meager amount.

10. 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.

11. Admittedly, there is no dispute with regard to the manner of accident and the involvement of the offending vehicle i.e., DCM bearing No. TS 10 UIA 0506. However, the Tribunal after evaluating the evidence of PWs.1 and 2 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.

12. With regard to the quantum of compensation is concerned, according to the petitioners, the deceased was a Cook by profession and earning Rs.10,000/- per month. However, as there is no income proof, the Tribunal has taken the income of the deceased at Rs.4,500/- per month, which is very less. Therefore, considering the age and avocation of the deceased and the year of accident 2016, his income 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 32 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 32 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 “16”. Then the loss of dependency would be Rs.6,300/- x 12 x 16 = **Rs.12,09,600/-**. 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 No.2 who is minor children of the deceased is also entitled to filial consortium at **Rs.40,000/-** as per the **Magma General Insurance Company Limited vs. Nanu Ram Alias**

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

Chuhru Ram³. Thus, in all, the petitioners are entitled for **Rs.13,26,600/-**.

13. With regard to the liability, though the learned Standing counsel for the Insurance Company pleaded that there is no valid driving license to the driver of the offending vehicle, except examining RW-1 on their behalf, they failed to prove that the driver of the offending vehicle was not having valid driving license at the time of accident. Further the police after thorough investigation filed charge sheet against the driver of the offending vehicle under Section 304-A of IPC without adding Section 181 of Motor Vehicles Act and the respondents though filed petition to summon the concerned RTA but could not adduce any evidence in support of their contention. Thus, the Tribunal rightly came to the conclusion that the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners.

14. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.9,77,200/- to **Rs.13,26,600/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the

³ 2018 Law Suit (SC) 904

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. 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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