

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.710 of 2020

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-VIII Additional District Judge (Fast Track Court), Warangal in M.V.O.P. No.608 of 2018, dated 28.09.2020, 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 07.02.2018 in the morning hours Vishwanath Srinivas went to Hanamkonda for loading bakery items in his trolley auto bearing No.AP 23 X 1519 and after loading, he proceeded to Labour Colony, Warangal through Flyover bridge and at about 14-00 hours when he was at Chinthal Flyover bridge, near Telangana Junction, one lorry bearing No. AP 36 TA 5556 came in a rash and negligent manner with high speed and hit his auto trolley, as a result of which Vishwanath Srinivas sustained fatal injuries and died on the spot. According to the petitioners, the deceased was auto driver and used to earn Rs.25,000/- per month. Thus the petitioners are claiming compensation of

Rs.14,00,000/- against the respondent Nos.1 to 3, who are driver, owner and insurer of the offending vehicle.

4. Respondent Nos.1 and 2 remained *ex parte*; Respondent No.3 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 death of V.Srinivas was caused to rash and negligent driving of lorry bearing No. AP 36 TA 5556 driven by respondent No.1/Kogila Mogili?
2. Whether the respondent No.1 was having valid and effective driving license to drive the offending vehicle?
3. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
4. To what relief?

6. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the respondent No.3-Chola MS General Insurance Company Limited. Perused the material available on record.

7. Vide aforesaid order, the Tribunal has awarded an amount of Rs.12,45,000/- towards compensation to the appellants-claimants against the respondents herein who are driver, owner and insurer of the offending vehicle, jointly and severally, along with proportionate costs and interest @ 6% per annum from the date of filing the claim till the date of realization, as against the claim of Rs.14 lakhs.

8. 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.6, established the fact that the death of the deceased-Vishwanath Srinivas was caused in a motor accident, the Tribunal awarded meager amount.

9. The learned Standing Counsel appearing on behalf of respondent No.3 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., lorry bearing No. AP 36 TA 5556. 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.

11. With regard to the quantum of compensation is concerned, according to the petitioners, the deceased was an auto driver and used to supply bakery items and earning Rs.25,000/- per month. However, as there is no income proof, considering the occupation of the deceased as auto driver, the Tribunal has taken the income of the deceased at Rs.8,000/- per month, which appears to be less to some extent. Therefore, considering the age and avocation of the deceased, the income of the deceased can be taken at Rs.9,000/- 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 49 years at the time of accident, 25% of the income is added towards future prospects. Then it comes to Rs.11,250/- (9,000 + 2,250 =

¹ 2017 ACJ 2700

11,250/-). 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.8,438/- ($11,250 - 2,812 = 8,438$) per month. Since the deceased was aged about 49 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 “13”. Then the loss of dependency would be Rs.8,438/- x 12 x 13 = **Rs.13,16,328/-**. 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). Thus, in all, the petitioners are entitled for **Rs.13,93,328/-**.

12. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the driver of the offending vehicle i.e., lorry bearing No. AP 36 TA 5556 and it was insured with the respondent No.3 under Ex.B1 covering the date of accident. Therefore, the Tribunal rightly held that the respondent Nos.1 to 3 are jointly and severally liable to pay the compensation to the petitioners.

² 2009 ACJ 1298 (SC)

13. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.12,45,000/- to **Rs.13,93,328/-**. 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. On such deposit, the claimants are entitled to withdraw the amount without furnishing any security. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

23.11.2022
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