

HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.1665 of 2012

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the judgment and decree, dated 11.01.2012 passed in O.P.No.1131 of 2008 on the file of the Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (for short “the Tribunal”), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

2. For the sake of convenience, the parties will be hereinafter referred to as arrayed before the Tribunal.

3. The facts, in issue, are as under:

4. The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.6,00,000/- for the death of the deceased-Jalagam Narsing Rao, who died in a motor vehicle accident that took place on 19.09.2008. It is stated that on the said date the deceased, along with his friend Bhaskar, were proceeding on Motor Cycle bearing No. AP 28 BD 5841 and when they reached in front of Punjab Dhaba near Shivaram Reddy Godowns at Kompally, a Lorry bearing No.ADT 9139, was illegally

parked on the highway, the motor cycle was hit to the stationed lorry, as a result of which, the deceased and his friend sustained grievous injuries and died. Basing on a complaint a case in Crime No.237 of 2008 has been registered against the driver of the Lorry. It is also stated that the deceased was aged about 32 years and was earning Rs.6,000/- per month as mason. Due to sudden demise of the deceased, the claimants, who are the wife, children and parents of the deceased, lost their source of income. Hence, the claimants filed the claim-petition against the respondents 1 and 2, who are the owner and insurer of the Lorry, respectively.

5. Before the Tribunal, the 1st respondent remained *ex parte*. The 2nd respondent filed counter denying the averments made in the claim-petition including the manner in which the accident took place, age, income and avocation of the deceased. It is also contended that the accident took place due to the negligence of the rider of the motor cycle as such the claimants are not entitled to any compensation. It is also stated that the compensation claimed is excessive and prayed to dismiss the claim-petition.

6. Basing on the above pleadings, the Tribunal framed the following issues.

1. Whether the pleaded accident occurred resulting in the death of the deceased and if so, was it due to the fault of the driver of the Lorry bearing No.ADT 9139 or the deceased and if both are responsible, what is the responsibility of each?
 2. Whether the Lorry in question belongs to R1 and stood insured with R2 and if so, whether the policy covers the risk of the deceased?
 3. Whether the petitioners are entitled to compensation and if so to what amount and what is the liability of R1 and R2?
 4. To what relief?
7. After analyzing the evidence available on record, the Tribunal held that there was 50% negligence on the part of the driver of the Lorry, which was stationed in the middle of the road without taking any precautions and 50% negligence on the part of the deceased and accordingly awarded an amount of Rs.2,50,000/- with interest @ 7.5% per annum from the date of petition till the date of realization to be paid by the respondents.
8. Learned Counsel for the claimants mainly submits that the Tribunal erred in holding that there was 50% contributory negligence on the part of the motorcyclists. It is also submitted that though the deceased was getting Rs.6,000/- per month, the

Tribunal erred in fixing the income of the deceased at Rs.3,000/- per month. It is further submitted that as per 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. Therefore, it is argued that the income of the deceased may be taken into consideration reasonably for assessing loss of dependency and prayed to enhance the same. Learned Counsel for the claimants relied upon the judgment of the Apex Court in ***Pawan Kumar and another v. M/s. Harkishan Dass Mohan Lal and others***².

9. Per contra, the learned Counsel for the Insurance Company submits that the income of the deceased has rightly been taken by the Tribunal as Rs.3,000/- per month since no documents have been produced to prove the income of the deceased. On the point of future prospects, learned Counsel submits that the matter has been considered by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (1 supra) and as per that judgment, the claimants are entitled 40% amount towards future prospects. It is further submitted that the compensation

¹ 2017 ACJ 2700

² (2014) 3 SCC 590

towards non-pecuniary damages has been rightly granted by the Tribunal and the same need not be enhanced. It is also submitted that the Tribunal has rightly held that there was 50% contributory negligence on the part of the motorcyclist, which needs no interference.

10. Basing on the rival contentions, the points that fall for consideration in this appeal are:

1. Whether there was any contributory negligence on the part of the deceased motorcyclist?
2. Whether the claimants are entitled to any enhancement?

11.POINT NO.1:

The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his

property, so that he becomes blameworthy in part as an author of his own wrong."

12. In the instant case, while answering the issue No.1, the Tribunal has categorically held that the accident took place in the broad day light i.e., at about 3.00 P.M., when the driver of the crime lorry is responsible for parking the vehicle without any proper precautions and the deceased motorcyclists are also responsible for the unfortunate accident and the proportion of contributory negligence can be determined at 50% each. The findings of the Tribunal in paragraph No.8 of the impugned judgment are necessary to be reproduced herein for better appreciation of the matter.

"According to the petitioners, the accident was due to rash and negligent on the part of the driver of the lorry. The insurance company contends that the driver of the insured lorry is not at all responsible for the accident and that it is the deceased motorcyclist, who is solely responsible for the accident. P.W.1 is the 1st petitioner and admittedly she is not the eye witness to the accident. The eye witness is examined as P.W.2. He claims to be at a distance of 15 feet from the accident spot. He deposed that the stationed lorry was facing towards Medchal and the deceased motorcyclist came from behind the lorry and dashed against the stationed lorry. He claims that the

accident was due to improper parking of the lorry and denied the suggestion that the deceased motorcyclists were responsible for the accident. The manner and circumstances in which the accident took place is also borne out from the documents that are placed on record. Admittedly, the motorcyclists have rammed into the stationed lorry. The sketch of the scene of offence is not produced. Therefore, it cannot be said that the stationed lorry was parked in such a way so as to give rise to the accident. In the charge sheet (Ex.A2) it is mentioned that the accident took place since the lorry was parked without any indicating signals. Taking into consideration the evidence on record and the manner in which the accident took place, I feel that the driver of the crime lorry cannot be held squarely and fully responsible for the accident. There is a contributory negligence on the part of the motorcyclists, who have rammed into the stationed lorry from behind. The accident took place in the broad day light i.e., at about 3.00 P.M., when the driver of the crime lorry is responsible for parking the vehicle without any proper precautions and the deceased motorcyclists are also responsible for the unfortunate accident and the proportion of contributory negligence can be determined at 50% each."

13. Admittedly, the accident took place in the broad day light and the motor cycle rammed into the stationed lorry, which shows that the rider of the motor cycle drove the motor cycle negligently without observing the vehicles on the road. The judgment relied

upon by the learned Counsel for the claimants is not applicable to the facts of the present case as in the said case two vehicles were involved but in the instant case the motor cycle rammed into the stationed lorry. If the rider of the Motor Cycle should be vigilant while driving his vehicle in the controllable speed, he could avoid the accident. Thus there is fault on the side of the deceased motor cyclist in dashing the stationed lorry, which can be fixed at 30% not 50% as determined by the Tribunal.

14. POINT NO.2:

Insofar as the quantum of compensation is concerned, though the claimants claimed that the deceased was running a tent house and earning Rs.6,000/- per month but no proof of income has been filed. In catena of decisions the Apex Court held that even there is no proof of income and earnings, it can reasonably be estimated. Therefore, this inclined to take the income of the deceased at Rs.4,000/- per month. As per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (1 supra)*** the claimants are entitled to addition of 40% towards future prospects. Therefore, monthly income of the deceased comes to Rs.5,600/- (Rs.4,000/- + Rs.1600/-). From this, 1/4th is to be deducted towards personal expenses of the deceased

following **Sarla Verma v. Delhi Transport Corporation**³ as the dependents are five in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.4,200/- per month. Since the age of the deceased was 32 years at the time of the accident, the appropriate multiplier is '16' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation (3 supra)**. Adopting multiplier '16', the total loss of dependency would be Rs.4,200/- x 12 x 16, which comes to Rs.8,06,400/-. Since there is contributory negligence on the part of the rider of the motor cycle at 30% and the claimants did not implead the owner and insurer of the said motor cycle, the claimants are entitled to a sum of Rs.5,64,480/- towards 70% of the compensation, payable by the respondents 1 and 2. The claimants are also entitled to Rs.77,000/- under the conventional heads as per **Pranay Sethi's** case (1 supra). Thus, in all the claimants are entitled to Rs.6,41,480/-.

15. Accordingly, the M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.2,50,000/- to Rs.6,41,480/-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the

³ 2009 ACJ 1298 (SC)

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.

16. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

17.03.2022
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