THE HON'BLE SMT. JUSTICE G.SRI DEVI

M.A.C.M.A. No.2672 of 2014

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the judgment and decree, dated 07-12-2004 passed in O.P.No.1170 of 2001 on the file of the Motor Accidents Claims Tribunal cum VI Addl. District Judge (FTC), R.R.District (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

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

The facts, in issue, are as under:

The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.2,00,000/- for the death of one D.Yadaiah (hereinafter referred to as "the deceased"), who died in a motor vehicle accident. It is stated that on 28-08-2001 the deceased, along with his brother D.Venkataiah, was returning from Vikarabad to Chittempally, when they were walking near State Bank from

Ananthagiri chowrastha towards NTR Chowrastha, a Lorry bearing No.AP 14 3599 driven by its driver in a rash and negligent manner at high speed and dashed the deceased Yadaiah, as a result of which, the deceased fell down, the said lorry ran over him and he was crushed to death. It is also stated that the deceased was hale and healthy and was earning Rs.2,500/- per month as he was a labourer. As the accident occurred due to rash and negligent driving of the driver of the Lorry, the claimants filed the claim-petition against the respondents 1 and 2, being the owner and insurer of the said Lorry.

Before the Tribunal, the 1st respondent remained *ex parte.* The 2nd respondent filed written statement denying the manner in which the accident took place including the age, avocation and income of the deceased. It is also stated that the quantum of compensation claimed is excessive and baseless and prayed to dismiss the petition.

Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the Lorry bearing No. AP-14 3599 by its driver?
2. Whether the vehicle involved in the accident is insured with the second respondent?
3. Whether the petitioner is entitled for any compensation, if so, to what amount, against whom?
4. To what relief?

On behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the 2nd respondent, no oral evidence was adduced but Ex.B1-insurance policy was marked.

After considering the oral and documentary evidence available on record, the Tribunal held that the accident was occurred due to the negligent driving of the driver of the Lorry and accordingly awarded an amount of Rs.2,00,000/- with interest @ 9% per annum from the date of petition till the date of realization to be paid by the respondents 1 and 2 jointly and severally. Challenging the same, the present appeal came to be filed by the claimants seeking enhancement.

Heard and perused the record.

A perusal of the impugned judgment would show that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Lorry by its driver, to which the Tribunal after considering the evidence of P.W.2 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Lorry and has answered in favour of the claimants and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of Lorry.

Insofar as the quantum of compensation is concerned, though the claimants claimed that the deceased was a labourer and earning Rs.2,500/- per month, the Tribunal has taken the income of the deceased at Rs.1,500/- per month as the claimants did not produce any proof to show that the deceased was earning Rs.2,500/- per month. Considering the age and avocation of the deceased and he being an able bodied person, this Court is inclined to take the income of the deceased at Rs.3,000/- per month. Apart from the same, the claimants are also entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others*[1]. Therefore, monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1200/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation*[2] as the claimants are four in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.3,150/- per month and Rs.37,800/- per annum. Since the age of the deceased was 35 years at the time of the accident, the appropriate multiplier is '16' as per the decision reported in *Sarla Verma v. Delhi Transport Corporation (2 supra)*. Adopting multiplier '16', the total loss

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[1] 2017 ACJ 2700

[2] 2009 ACJ 1298 (SC)

of dependency would be Rs.37,800/- x 16= Rs.6,04,800/-. 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.6,81,800/-.

At this stage, the learned counsel for the Insurance company submits that the claimants claimed only a sum of Rs.2,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

In Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another, the Apex Court while referring to Nagappa Vs. Gurudayal Singh held as under:

> "It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa Vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any

competent Court is entitled to award higher compensation to the victim of an accident."

In view of the Judgments of the Apex Court referred to above, the claimants are entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

Accordingly, M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.2,00,000/- to Rs.6,81,800/-. 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 No.1 and 2 only. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. However, the claimants are directed to pay deficit Court fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

Date: 29.06.2022.
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