HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.1769 of 2015

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Nalgonda in O.P. No.1043 of 2010, dated 02.07.2012, 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 13-11-2010 the deceased-Lingaiah along with his workers attending road repairs at Jangareddygudem of Thipparthy Mandal and at 2-00 p.m. he was taking rest near Tipper lorry bearing No. AP.24.T.5630 and at about 2-15 p.m. the driver of Tipper started the vehicle in rash and negligent manner and ran over the Lingaiah, due to which Lingaiah received serious injuries and died on the spot. According to the claimants, the deceased was a Gang Mazdoor in Roads and Buildings Department and drawing monthly salary of Rs.16,785/-. Thus the petitioners are claiming compensation of Rs.25,00,000/- 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 deceased by name Lingaiah died due to rash and negligent driving of the driver of Tipper lorry bearing No. AP.24.T.5630?
2. Whether the claimants are entitled for compensation, if so, what amount and 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 Oriental Insurance Company Limited. Perused the material available on record.

7. Vide aforesaid order, the Tribunal has awarded an amount of Rs.14,65,000/- towards compensation to the appellants-claimants against the respondents herein who are owner and insurer of the offending vehicle, jointly and severally, along with costs and interest @ 6% per annum from the date of

petition till the date of realization, as against the claim of Rs.25 lakhs.

8. The learned counsel for the appellants-claimants has submitted that although the claimants, by way of evidence of P.Ws.1 to 3, and Exs.A.1 to A.9 and Exs.A1 to X3, established the fact that the death of the deceased-Lingaiah 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 considering all the aspects, the learned Tribunal has awarded just and 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 lorry bearing No. AP.24.T.5630. However, the Tribunal after evaluating the evidence of PWs.1 to 3 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 a Gang Mazdoor in Roads and Buildings Department and drawing monthly salary of Rs.16,785/-. As per the evidence of PW-3, who is one of the officials of Roads and Buildings Department, it is clearly established that the gross salary of the deceased was Rs.16,785/- per month. But the Tribunal had taken the income of the deceased at Rs.10,000/- per month which is very less. Thus considering the avocation of the deceased as a Government employee, his income can be taken at Rs.16,785/- per month, in which an amount of Rs.100/- is to be deducted towards professional tax per month. Then it comes to Rs.16,685/- 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 40 years at the time of accident, 30% of the income is to be added towards future prospects. Then it

[1] 2017 ACJ 2700

comes to Rs.21,690/- (16,685 + 5005 = 21,690/-). Since the deceased left as many as seven persons as the dependants, 1/5th of his income is to be deducted towards his personal and living expenses. Then the contribution of the deceased would be Rs.17,352/- (21,690 – 4338 = 17,352/-) per month and per annum it comes to Rs.2,08,224/-. The income Tax exemption for the year 2011 is Rs.1,60,000/-. So, the taxable income is Rs.48,224/- (Rs.2,08,224 – 1,60,000/- = 48,224/-). Therefore, 10% of the taxable income is to be deducted towards income tax, which comes to Rs.4,822/-. Then the annual contribution of the deceased comes to Rs.2,03,402/- (2,08,224 – 4,822 = 2,03,402/-). Since the deceased was aged about 40 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 "15". Then the loss of dependency would be Rs.2,03,402/- x 15 =**Rs.30,51,030/-.** 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 Nos.4 and 5 who are minor children of the deceased are entitled for **Rs.50,000/- each** as filial consortium as per **Magma General Insurance**

[2] 2009 ACJ 1298 (SC)

Company Limited v Nanu Ram alias Chuhru Ram[3]. Thus, in all, the compensation is enhanced to **Rs.32,28,030/-** awarded by the Tribunal.

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., Tipper lorry bearing No. AP.24.T.5630 and it was insured with the second respondent under Ex.B1 covering the date of accident. Therefore, the Tribunal rightly held that the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

13. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.14,65,000/- to **Rs.32,28,030/-**. 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. The claimants shall pay the deficit court fee and on payment of

[3] (2018) 18 SCC 130

deficit court fee only, 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

23.11.2022
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