

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.1505 of 2015

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Chairman, Motor Accidents Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Court, Hyderabad in M.V.O.P. No.1288 of 2012, dated 23.01.2015, the present appeal is filed by the claimants seeking enhancement of compensation. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

2. The appellants herein are parents of the deceased. According to the petitioners, on 20.11.2011 the deceased-B.Sailesh being a pillion rider and his friend P.Sai Kiran were proceeding from their house to go to Tadicherla Palem on their motor bike bearing No. AP.35.M.4328 and when they reached Government Polytechnic college on National Highway No.5, the driver of lorry bearing No. TN.67.M.6565 which was also proceeding in the same direction, drove it in rash and negligent manner at high speed and dashed the motor bike. Due to which, the deceased and his friend fell down on the

road and died on the spot. Hence, the claimants seeking compensation of Rs.5,00,000/-.

3. Respondent No.1 remained exparte; Respondent No.2 filed counter disputing the manner of accident as pleaded by the claimants and also the age, avocation and income of the deceased. It is further contended that the claim is exorbitant and sought for dismissal of the claim petition.

4. In view of the above pleadings, the Tribunal raised the following issues:

- 1) Whether B.Sailesh died in a motor accident due to the rash and negligent driving of driver of lorry bearing No. TN.67.M.6565?
- 2) Whether the petitioners are entitled to compensation, if so, how much and from whom?
- 3) To what relief?

5. In order to prove the issues, petitioner No.1 was examined herself as PW-1 and got relied on Exs.A-1 to A-4. On behalf of respondents, no witnesses were examined, however, Ex.B-1 was marked.

6. On considering the oral and documentary evidence on record, the Tribunal has awarded an amount of Rs.5,00,000/- towards compensation to the appellants-claimants against the respondent Nos.1 and 2 herein who are owner and insurer of the offending vehicle i.e., lorry bearing No.TN.67.M.6565, jointly and severally, along with costs and interest @ 6% per annum from the date of order till realisation, as against the claim of Rs.5 lakhs by the appellants-claimants for the death of the deceased-B.Sailesh in a road accident that occurred on 20.11.2011.

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

8. The learned counsel for the appellants had submitted that the claimants have claimed a sum of Rs.5 lakhs on the ground that the deceased was aged about 16 years, studying Intermediate, apart from his studies, he was giving tuitions and earning Rs.5,000/- per month. However, the learned Tribunal has taken the income of the deceased at Rs.5,000/-

per month and 50% of the income deducted towards his personal expenditure but not considered the future prospects and therefore, prays to allow the appeal.

9. On the other hand, the learned Standing Counsel for the respondent No.2-Insurance Company contended that the Tribunal failed to appreciate the oral and documentary evidence and misconstrued the documents and that the compensation awarded by the Tribunal is excessive and exorbitant.

10. With regard to the manner of accident, there is no dispute. However, the Tribunal on evaluation the oral and documentary evidence available on record, has rightly held that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.TN.67.M.6565.

11. The only dispute in the present appeal is with regard to the quantum of compensation. According to PW-1, the deceased was studying Intermediate and apart from his studies, he was giving tuitions and earning Rs.5,000/- per month. But there is no oral or documentary evidence to that

effect. Thus, the income of the deceased can be taken at Rs.4,500/- per month. However, as per the appellants, future prospects of the deceased were not considered by the Tribunal. 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 entitled to future prospects @ 40% of his income, since the deceased was aged 16 years. Then it comes to Rs.6,300/- (4,500 + 1,800 = 6,300/-). Since the deceased was a bachelor, 50% of his income is to be deducted towards his personal and living expenses. Then the contribution of the deceased would be Rs.3,150/- per month. Since the deceased was aged about 16 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 “18”. Then the loss of dependency would be Rs.3,150/- x 12 x 18 = **Rs.6,80,400/-**. In addition thereto, under the conventional heads, the claimants are granted **Rs.33,000/-** as per the decision of the Apex Court in ***Pranay Sethi*** (supra). Further the petitioners who are parents of the deceased are also entitled for **Rs.40,000/-** each as filial

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

consortium in light of **Magma General Insurance Company Limited v Nanu Ram alias Chuhru Ram**³. Thus, in all, the compensation is awarded as follows:

Sl.No.	Description of the item	Amount awarded
1.	Loss of dependency (Rs.3,150/- x 12 x 18 = Rs.6,80,400/-)	6,80,400-00
2.	Conventional heads	33,000-00
3.	Filial consortium	80,000-00
	Total:	Rs.7,93,400-00

12. With regard to the liability, the Tribunal rightly held that, since the offending vehicle was insured with the second respondent-Shriram General Insurance Company Limited, and the said policy was in force as on the date of accident, respondent Nos.1 and 2 are jointly and severally liable to pay compensation awarded to the petitioners.

13. The contention of the learned Standing Counsel for the respondent No.2-Insurance Company that the Tribunal ought not to have awarded the compensation more than the one claimed by the claimants does not merit consideration. In **Laxman @ Laxman Mourya Vs. Divisional Manager,**

³ (2018) 18 SCC 130

Oriental Insurance Company Limited and another⁴, the Apex Court while referring to the decision in ***Nagappa Vs. Gurudayal Singh***⁵ 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 claimant(s) is/are entitled to claim more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant is a paramount consideration, the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent. Considering the circumstances of the case, contention of the learned counsel for the respondent No.2-Insurance Company that the petitioners are not entitled

⁴ (2011) 10 SCC 756

⁵ 2003 ACJ 12 (SC)

to claim more amount than what they have been claimed, is rejected.

14. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.5,00,000/- to **Rs.7,93,400/-**. The enhanced amount shall carry interest at 6% p.a. from the date of this order till the date of realization, to be payable by the respondent Nos.1 and 2 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 deficit Court fee on the enhanced compensation, since the initial claim was for Rs.5,00,000/-. On such payment of court fee only, the claimants are entitled to withdraw the amount. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

23.09.2022
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