

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.2039 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 11.06.2014 passed in M.V.O.P.No.2253 of 2012 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array 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.14,50,000/- for the death of one V.Ramesh (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 12.08.2012. It is stated that on 12.08.2012 while the deceased was proceeding in a car, when the car reached Gandhi Cheruvu, ORR Service Road, Hayathnagar, the crime vehicle i.e., Lorry bearing No.AP 16 TY 4657, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner, dashed the Car. As a result, the deceased

sustained grievous injuries and after undergoing treatment for a while, he succumbed to the injuries on 15.08.2012 at Gandhi Hospital, Secunderabad. It is stated that the deceased was aged about 23 years and earning Rs.9,000/- per month as driver. 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.

5. Before the Tribunal, while the respondent No.1 remained *ex parte*, respondent No.2 filed counter 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.

6. After considering claim, counter and the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to the negligent driving of the driver of the Lorry and accordingly awarded an amount of Rs.8,54,000/- with interest @ 7.5% 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.

7. Heard and perused the record.

8. The main contention of the learned counsel appearing for the appellants is that although the deceased was driver and earning Rs.9,000/- per month and though by marking Ex.A6, driving licence of the deceased, the claimants have sufficiently established his avocation, in the absence of any rebuttal evidence by the insurance company, the Tribunal ought to have accepted the avocation of the deceased and the income, but however, the Tribunal has fixed the income of the deceased at Rs.4,500/- per month treating him as coolie. It is further contended that the claimant Nos.1 and 2, who are the parents of the deceased, ought to have been granted filial consortium of Rs.40,000/- each in view of the judgment of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***¹.

9. On the other hand, the learned Standing counsel for the respondent No.2, Insurance company, has contended that mere producing Ex.A6, driving licence of the deceased, is not sufficient to accept the avocation of the deceased as driver and in the

¹ (2018) 18 SCC 130

absence of any oral or documentary evidence to prove that the deceased was working as driver, the Tribunal has rightly rejected the said claim. It is further contended that since the deceased was not a permanent employee, the Tribunal ought not to have added 50% towards future prospects to the established income of the deceased, instead it should have been 40%. It is lastly contended that since the deceased was bachelor, as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***², the claimants are entitled to only Rs.33,000/- under conventional heads, but not Rs.1,25,000/- as was awarded by the Tribunal.

10. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged by either of the respondents.

11. As regards the quantum of compensation, though the claimants claimed that the deceased was a driver by producing Ex.A5, driving licence, and was earning Rs.9,000/- per month, the Tribunal has taken the income of the deceased at Rs.4,500/- per month considering the avocation of the deceased as coolie since the claimants did not substantiate the claim that the deceased was

² 2017 ACJ 2700

working as driver. But the fact remains that since the deceased was holding Ex.A5, driving licence, he was a skilled worker and therefore, this Court inclined to take the income of the deceased at Rs.5,000/- per month. Apart from the same, since the deceased was 23 years, the claimants are also entitled to addition of 40% towards future prospects to the established income, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.7,000/- (Rs.5,000/- + Rs.2000/-). From this, 50% is to be deducted towards personal expenses of the deceased following **Sarla Verma v. Delhi Transport Corporation**³ since the deceased was a bachelor. After deducting 50% therefrom, towards his personal and living expenses, the contribution of the deceased to the family would be Rs.3,500/- per month. Since the age of the deceased was 23 years at the time of the accident, the appropriate multiplier is '18' as per the decision reported in **Sarla Verma** (supra). Adopting multiplier '18', the total loss of dependency comes to Rs.3,500/- x 12 x 18 = Rs.7,56,000/-. The claimants are also entitled to Rs.33,000/- under the conventional heads as per **Pranay Sethi's** case (supra). That apart, under the head of filial consortium, the claimant Nos.1 and 2, being parents are entitled to

³ 2009 ACJ 1298 (SC)

Rs.40,000/- each as per the decision of the Apex Court in **Nanu Ram @ Chuhru Ram** (supra). Thus, in all the claimants are entitled to Rs.8,69,000/-.

12. Accordingly, M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.8,54,000/- to Rs.8,69,000/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of passing of order by the Tribunal till the date of realization. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the entire compensation is two months from the date of receipt of a copy of this judgment. On such deposit, the major claimants are entitled to withdraw their respective share amounts without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

21.10.2022
Tsr

SMT. M.G.PRIYADARSINI, J

