

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.2877 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded *vide* award and decree, dated 16.11.2015 passed in M.V.O.P.No.215 of 2014 on the file of the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge at Warangal (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.25,00,000/- for the death of one Ch.Anjaiah (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 29.05.2013. It is stated that on 29.05.2013 while the deceased was proceeding on a motorcycle as pillion rider that was being driven by his son,

when they reached Railway Under Bridge, Alair, at about 1:00 P.M., the crime vehicle i.e., Tipper Lorry bearing Registration No.AP 27 V 8402, owned by respondent No.1 and insured with respondent No.3, being driven by its driver in a rash and negligent manner, hit the motorcycle in the opposite direction. As a result, the deceased fell down on the right side of the road, front wheels of the lorry ran over the head of the deceased, which resulted in his instantaneous death. It is also stated that the deceased was aged about 52 years and working as Librarian at Zilla Parishad at Rajapet and was drawing Rs.26,185/- per month. As the accident occurred due to rash and negligent driving of the driver of the Tipper Lorry, the claimants filed the claim-petition against the respondents 1 to 4.

5. Before the Tribunal, while the respondent Nos.1 and 2 remained *ex parte*, respondent Nos.3 and 4 contested the O.P. by filing 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. Considering claim, counter and the oral and documentary evidence available on record, the Tribunal held that there was 50% negligence on the part of the rider of the motorcycle on which the deceased was traveling as pillion rider and 50% negligence on the part of the driver of the crime vehicle i.e., Tipper Lorry and accordingly awarded an amount of Rs.13,99,972/- with interest @ 7.5% per annum from the date of petition till the date of realization to be paid by the respondent Nos.1, 3 and 4 jointly and severally. Challenging the same, the present appeal came to be filed by the claimants seeking enhancement of compensation.

7. Heard and perused the record.

8. It is contended by the learned counsel appearing for the appellants that the Tribunal erred in holding that there was 50% contributory negligence on the part of the rider of the motorcycle on which the deceased was traveling as pillion rider, without there being any evidence adduced either by the

owner or by the Insurance Company. As regards the quantum of compensation, it has been contended that as per Ex.X3, salary certificate, the salary of the deceased was fixed at Rs.46,643/- due to implementation of pay revision which came into effect on 02.06.2013, and therefore, the Tribunal ought to have taken the said income into consideration while calculating the loss of dependency.

9. On the other hand, the learned Standing counsel for the respondent Nos.3 and 4, Insurance company, has contended that it is a case of head on collision and therefore, the Tribunal has rightly fixed the contributory negligence at 50% on the part of the rider of the motorcycle and 50% on the part of the driver of the offending vehicle and the same needs no interference by this Court. As regards the quantum of compensation, it is contended that by the time of the accident, the gross salary of the deceased was taken into consideration by the Tribunal based on Ex.A4, salary certificate of the deceased, however, Exs.X3 and X4, salary certificates are after implementation of the pay revision which came into force on 02.06.2013 but the accident was occurred

on 29.05.2013 and therefore, the Tribunal has rightly discarded Exs.X3 and X4 since it has already added future prospects at 15% considering the age of the deceased. It is lastly contended that as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimants are entitled to only Rs.77,000/- under conventional heads, but not Rs.1,25,000/- as was awarded by the Tribunal. Even the Tribunal has erred in awarding Rs.25,000/- under the head of pain and suffering.

10. 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."

¹ 2017 ACJ 2700

11. In the instant case, while answering the issue No.1, the Tribunal, considering the fact that the accident took place in the broad day light in the afternoon and as it was head on collision, has inferred that there was negligence on the part of the drivers of both the vehicles. The findings of the Tribunal in paragraph No.12 of the impugned award are necessary to be reproduced herein for better appreciation of the matter.

“12. The charge sheet is not filed and marked during evidence. However, according to the pleadings in the O.P. charge sheet is filed and the same is numbered as C.C.No.900 of 2013 on the file of the Judicial First Class Magistrate, Alair. On account of the fact that the accident occurred due to head on collision that too in broad day light in the afternoon, it has to be inferred that there was negligence on the part of drivers of both the vehicles. There is no reason for P.W.1 not to notice a heavy vehicle like Tipper Lorry loaded with granite coming in the opposite direction. Therefore, issue No.1 is answered holding that drivers of both the vehicles are responsible for occurrence of accident resulting in the death of the deceased. The negligence of each of the drivers is inferred to be 50%.”

12. Thus, as seen from the findings extracted above, merely because the accident was as a result of head on collision in a

broad day light, the tribunal came to the conclusion that there was contributory negligence on the part of the rider of the motorcycle at 50%. Admittedly, the charge sheet was not filed before the Tribunal. During pendency of the appeal, by way of additional evidence, the claimants have produced the copy of charge sheet, dated 28.06.2013. As seen from the contents of the charge sheet, the police after due investigation into the crime, have laid the charge sheet against the driver of the crime vehicle holding that the accident occurred due to the rash and negligent driving of the Tipper Lorry by its driver. Even the charge sheet reflects that the driver, who was accused, has admitted his guilt of negligent driving, which resulted into the accident. Merely because the accident was due to head on collision, it cannot be presumed that there was contributory negligence on the part of both the drivers, more particularly, when the charge sheet was filed by the Police concluding that the accident had occurred as a result of the negligence on the part of driver of the crime vehicle only. Such being the case and based on the contents of the charge sheet, the finding of the Tribunal that there was

negligence on the part of the rider of the motorcycle on which the deceased was proceeding as pillion rider, is not sustainable under law and the same is set aside holding that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle i.e., Tipper lorry only.

13. As regards the quantum of compensation, as per Ex.A4, salary certificate, the deceased was drawing a salary of Rs.26,185/- per month. It is the contention of the learned counsel for the claimants that due to the implementation of pay revision commission which came into effect on 02.06.2013, as per Ex.X3, the salary of the deceased would be Rs.46,958/- per month had the deceased alive. I am afraid to accept the said contention since the accident occurred on 29.05.2013 and the pay revision commission came into force on 02.06.2013, which is subsequent to the accident. Therefore, since the future prospects of the deceased have already been taken care of while fixing the loss of dependency, the contention of the learned counsel for the claimants that the tribunal ought to have taken into consideration the salary

fixed by implementation of pay revision is rejected. Thus, the monthly salary of the deceased was rightly taken into consideration at Rs.26,815/- by the Tribunal. Considering the age of the deceased as 52 years, the Tribunal has rightly added 15% towards future prospects to the established income of the deceased and thereby, the monthly income of the deceased was rightly fixed at Rs.30,113/-. After deducting 1/3rd therefrom towards personal expenses of the deceased, the net monthly contribution of the deceased to the family comes to Rs.20,075/- which can be rounded off to Rs.20,000/-. Since the age of the deceased was 52 years at the time of the accident, the Tribunal has rightly applied the multiplier '11' and arrived at loss of dependency at Rs.20,000/- x 12 x 11 = Rs.26,40,000/-. As rightly argued by the learned standing counsel for insurance company, under the conventional heads, the claimants are entitled to Rs.77,000/- only but not Rs.1,25,000/- as was awarded by the Tribunal. Even the Tribunal has erroneously awarded an amount of Rs.25,000/- under the head of pain and suffering. Thus, in all, the claimants are entitled to Rs.27,17,000/-. As

stated above, as this Court came to the conclusion that there was no negligence on the part of the rider of the motorcycle, respondent Nos.3 and 4 are liable to pay the entire compensation of Rs.27,17,000/- together with interest and costs. As per the judgment of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***², the Court can grant just compensation even though the claimants claimed lesser amount towards compensation, subject to the condition of the payment of deficit court fee on the enhanced amount.

14. Accordingly, M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.13,99,972/- to Rs.27,17,000/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of passing of award 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

² (2011) 10 SCC 756

entitled to withdraw their respective share amounts without furnishing any security. However, the claimants are directed to pay the deficit Court Fee on the enhanced compensation. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

.10.2022
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