

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

M.A.C.M.A. No.1595 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the award and decree, , dated 28.04.2015 passed in M.V.O.P.No.1198 of 2010 on the file of the Chairman, Motor Vehicles Accident Claims Tribunal (I- Additional District Judge), Warangal. The claimants have filed this appeal for enhancement of compensation amount.

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

3. Brief facts of the case are that the claimants, who are the parents and sister of Kancherla Abhinav Reddy (hereinafter referred to as "the deceased") filed a petition under Section 166(1) (c) of the Motor Vehicles Act 1988 r/w Rule 455 of A.P.M.V. Rules, 1989, claiming compensation of Rs.13,00,000/- for the death of the deceased, who died in a motor vehicle accident. It is stated that the deceased was student, studying B.Tech. in Ramappa Engineering College, Warangal. That on 15.07.2010, the deceased went to the house of his aunt namely Peddi Rajani on motorcycle bearing No.AP36 AA-4241 on his

personal work. On completion of his personal work, while he was returning home and at about 9:20 p.m., when the deceased reached in front of Nava Jyothi Lorry Office, Warangal, the driver of the Lorry bearing No.AP16 U-6477 (for succinct, crime vehicle) drove it in high speed in a rash and negligent manner coming from Subedari side and dashed the motorcycle of the deceased in opposite direction, due to which, the deceased fell down on the road and the lorry ran over the deceased, causing his instantaneous death. Since the accident occurred due to rash and negligent driving on the part of the driver of the crime vehicle, the SHO, Matwada Police Station, registered a case for the offence punishable under Section 304-A of I.P.C. against the driver of the Lorry bearing No.AP16 U-6477 and took up the investigation. It is stated that prior to the accident, the deceased was hale and healthy and was studying B.Tech. final year. He was earning Rs.4,000/- per month by conducting tutions. Since the accident occurred due to the rash and negligent driving of the driver of the Lorry, the claimants laid the claim-petition against respondent Nos.1 and 3, who are the owner, insurer and local insurance company of the Lorry, respectively.

4. Before the Tribunal, respondent Nos.1 and 2 remained *ex parte*.

5. Respondent No.3, filed counter denying the averments in the petition including the manner in which the accident took place, age, income and avocation of the deceased at the time of alleged accident. It is contended that the accident took place only due to negligence and negligent riding of the motorcycle on the part of the deceased and that there was no negligence on the part of the driver of the Lorry, as such the respondent No.3 is not liable to pay any compensation. It is further contended that the driver of the crime vehicle was not having valid and effective driving license to drive the crime vehicle at the time of accident and that the lorry was also not in fit condition to ply on the road. It is further contended that there was contributory negligence on the part of the deceased, who was riding the motorcycle at the time of the accident. It is further contended that the claim-petition is liable to be dismissed for non-joinder of necessary parties i.e., owner and insurer of the motorcycle. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

6. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether on 15.07.2010 at 21:20 hours in front of Nava Jyothi Lorry Office near Pothana Water Tank, Warangal City and District, the driver of Lorry bearing No.AP16 U-6477, drove it in a rash and negligent manner, resulting in the accident and death of the deceased- Kancherla Abhinav Reddy?
- 2) Whether the petitioners are entitled to any compensation and if so, to what amount and from whom?
- 3) To what relief?

7. During trial, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A11 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

8. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the motor cycle and accordingly awarded an amount of Rs.10,83,000/- with interest @ 6 % per annum from the date of petition till the date of realization to be paid by the respondents.

9. Heard and perused the material available on record.

10. The only contention raised by the learned Counsel for the claimants is that as per 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 also Rs.77,000/- under conventional heads.

11. Learned Standing Counsel for the 3rd respondent have submitted that the issue with regard to the future prospects has been considered by the Tribunal as per the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra) and as per that judgment, the compensation towards non-pecuniary damages has been rightly granted by the Tribunal and the same need not be enhanced.

12. A perusal of the impugned award discloses that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the driver of the Lorry, to which the Tribunal after considering the evidence of P.Ws.1 and 2 coupled with the documentary evidence i.e., charge sheet, has categorically observed that the accident occurred due to the rash and negligent driving of the driver of

¹ 2017 ACJ 2700

the Lorry and has answered in favour of the claimants and against the respondents. While discarding the evidence of R.W.1, the Tribunal has categorically observed that the evidence of R.W.1 cannot be taken into consideration as they did not examine the investigator, who caused investigation and filed his report stating that the accident occurred due to negligence of the deceased. 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 the Lorry.

13. Insofar as the quantum of compensation is concerned, admittedly, the deceased was studying B.Tech. final year and if he has completed his graduation in Engineering, he would get an income of Rs.12,000/- per month. According to the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation and another***², the future prospects are taken into consideration, if the deceased has a permanent job at the time of accident. In the present case, the deceased was still a student of engineering and had no permanent job and, therefore, the future prospects are not granted in this matter. Since the deceased was bachelor and his parents and

² (2009) 6 SCC 121

sister are the dependents, 50% is to be deducted towards his personal and living expenses. 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 v. Delhi Transport Corporation and another**³. Adopting multiplier 18, his total loss of earnings would be Rs.6,000/- x 12 x 18 = Rs.12,96,000/-. The claimants are also entitled to Rs.33,000/- towards loss of estate and funeral expenses, as per **Pranay Sethi's** case (supra). As per the judgment of the Apex Court in **Magma General Insurance Co. Ltd. v. Nanu Ram**⁴, the parents of the deceased are also entitled to Rs.40,000/- each towards parental consortium. Thus, in all the claimants are entitled to Rs.14,09,000/-.

14. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.13,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

³ (2009) 6 SCC 121

⁴ (2019) 3 SCC (Civ) 146

15. In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***⁵, the Apex Court while referring to ***Nagappa Vs. Gurudayal Singh***⁶ 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.”

16. 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.

17. Insofar as the interest is concerned, the Tribunal has awarded interest at 6% per annum on the compensation. As per the decision of the Apex Court in ***Rajesh and others v.***

⁵ (2011) 10 SCC 756

⁶ 2003 ACJ 12 (SC)

Rajbir Singh and others⁷ the claimants are entitled to interest @ 7.5% per annum.

18. Accordingly, the M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.10,83,000/- to Rs.14,09,000/-. The enhanced amount will carry interest at 7.5% p.a. from the date of petition till the date of realization, payable by respondent No.3. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. On such deposit, the claimants are permitted to withdraw their respective shares without furnishing any security. However, the claimants are directed to pay the deficit Court Fee on the enhanced compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

14.10.2022
BB/VSL

⁷ 2013 ACJ 1403 = 2013 (4) ALT 35