

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

M.A.C.M.A. No.1821 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 22.07.2014 passed in O.P.No.1585 of 2012 on the file of the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the appellants preferred the present appeal seeking enhancement of the compensation.

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 husband and children of one Smt.B.Lakshmi (hereinafter referred to as "the deceased") filed a petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.5,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 04.06.2012. It is stated that on 04.06.2012 while the deceased, along with her husband and others, were travelling in a Car bearing No.AP 09 AL 5767 from Nirmal towards Hyderabad and when the said Car reached Torlikonda Village cross road on NH.44 one lorry

bearing No.AP 01X 5949 being driven by its driver in a rash and negligent manner and at high speed and dashed to the Car from its behind. As a result of which, the deceased has sustained injuries and succumbed to injuries while he was shifting to the hospital. The Police, Jakranpally Police Station, registered a case in Crime No.63 of 2012 for the offence punishable under Section 304-A of I.P.C. against the driver of the lorry and took up the investigation. It is stated that prior to the accident, the deceased was hale and healthy and was working as tailor and earning Rs.10,000/- per month. 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 2, who are the owner and insurer of the said lorry, respectively.

4. Before the Tribunal, respondent No.1 remained *ex parte*.

5. Respondent No.2, filed counter denying the averments in the petition including the manner in which the accident took place, age, income and avocation of the deceased. It is further denied that the driver of the Lorry was having valid driving licence at the time of the accident. It is also contended that the

accident took place due to the rash and negligent driving of the driver of the Car and the claim-petition is bad for non-joinder of necessary parties i.e., owner and insurer of the Car. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

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

- 1) Whether the accident took place due to the rash and negligent driving of the vehicle bearing No.AP 01X 5949 causing death of Smt.B.Lakshmi?
- 2) Whether the petitioners are entitled for compensation? If so, to what extent 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, no oral evidence was adduced but Ex.B1, policy copy 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 Lorry and accordingly awarded an amount of Rs.4,77,917/- with interest @ 7.5 % 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 Rs.77,000/- under conventional heads.

11. There is no dispute regard to the rash and negligence as stated above. The only ground for filing Appeal is for quantum of compensation awarded by the Tribunal. Insofar as the quantum of compensation is concerned, the appellants claimed that the deceased was a Tailor and was earning Rs.10,000/- per month, but no documentary evidence has been produced by the claimants. Hence the decree will fall under the category of house wife. In ***Lata Wadhwa and others v. State of Bihar and others***² the Apex Court had observed that considering the multifarious services rendered by housewives, even on a modest estimation, the income of a housewife between the age group of

¹ 2017 ACJ 2700

² AIR 2001 SC 3218

34 to 59 years, who were active in life, should be assessed at Rs.36,000/- per annum in the year 2001. In the instant case, relying upon the Post Mortem Examination Report, Ex.A5, the Tribunal has categorically held that the deceased was aged about 45 years as on the date of the accident. Hence, in view of the above judgment of the Apex Court, considering the age and avocation of the deceased, this Court inclined to fix the income of the deceased at Rs.5,000/- per month.

12. Insofar as the future prospects are concerned to the housewives, the Apex Court recently in ***Kirti and another etc. v. Oriental Insurance Company Ltd.***³ made certain general observations regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation, which can be summarized as follows:

“a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to

³ AIR 2021 SC 353

men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”

13. In view of above said decision, the claimants shall be entitled to future prospects at the rate of 25%. Therefore, monthly income and future prospects of the deceased comes to Rs.6,250/- (Rs.5,000/- + Rs.1,250/-). Since the number of dependant family members of the deceased was 3, the deduction towards personal and living expenses shall be at the

rate of 1/3 of the said amount, i.e., Rs.4,166/- per month. Since the age of the deceased was 45 years at the time of the accident, the appropriate multiplier is '14' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation and another**⁴. Adopting multiplier 14, his total loss of earnings would be Rs.4,166/- x 12 x 14 = Rs.6,99,888/-. The claimants are also entitled to Rs.77,000/- towards conventional heads as per **Pranay Sethi's** case (supra). Further, considering Ex.A10, medical bills and also the nature of treatment undergone by the deceased, the Tribunal has rightly awarded Rs.72,917/-. Thus, in all the claimants are entitled to Rs.8,49,805/-.

14. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.5,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

15. In **Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another**⁵, the

⁴ (2009) 6 SCC 121

⁵ (2011) 10 SCC 756

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. Accordingly, the M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.4,77,917/- to Rs.8,49,805/-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing

⁶ 2003 ACJ 12 (SC)

of award by the Tribunal till the date of realization, payable by respondents 1 and 2 jointly and severally. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. However, the claimants are directed to deficit Court Fee on the enhanced compensation. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

14.10.2022
VSL/BB

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Dated: 14.10.2022
VSL/Bb