

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

M.A.C.M.A. No. 2358 of 2015

JUDGMENT:

Challenging the order and decree, dated 22.09.2014 passed in O.P.No.2640 of 2011 on the file of the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the claimant filed the present appeal, whereby the learned Tribunal dismissed the claim-petition filed by the claimant.

2. The appellant/claimant, who is the married daughter of one Pangi Appa Rao (hereinafter referred to as "the deceased"), filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.6,00,000/- for the death of the deceased, who died in a motor accident that occurred on 16.10.2011 at about 7:00 p.m., between KTR Resorts and Jaganguda Colony, due to the rash and negligent driving of Bus bearing No.AP 24T 5831. Since the accident occurred due to the rash and negligent driving of the driver of the Bus bearing No.AP 24 T 5831, the claimant filed the claim-petition against the respondents 1 and 2, who are the owner and insurer of the said Bus.

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

4. Respondent No.2 filed a counter contending that the petition is not maintainable either on law or on facts. It is specifically denied the involvement of the bus and also the relationship of the claimant with the deceased. Respondent No. 2 further denied the manner in which the accident occurred, age, avocation and income of the deceased. It is specifically contended that the claimant is dependent upon the deceased at the time of accident and there was no loss of estate on account of the death of the deceased. It is also contended that the amount claimed is excessive, arbitrary and out of all proportions and prayed to dismiss the petition.

5. Basing on the above pleadings, the Tribunal has framed the following issues:-

1. Whether the accident had occurred on account of the rash and negligent driving of the driver of the offending vehicle i.e., bus bearing No.AP 24 T 5831?

2. Whether the offending vehicle driver was having effective driving licence at the time of the alleged accident?
 3. Whether the offending vehicle was having proper records at the time of the alleged accident?
 4. Whether the petitioner is entitled to the compensation? If so, from whom and if so to what extent?
 5. To what relief?
6. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the claimant is the married daughter and she is not dependent on the deceased to claim compensation, hence she is not entitled for compensation due to death of the deceased in the accident and accordingly dismissed the claim-petition. Challenging the same, the present appeal is filed.
7. Heard both sides and perused the material available on record.
8. Considering the rival submissions made by the counsel appearing on both sides, the point that arises for consideration in this appeal is whether the claimant, who

is the married daughter of the deceased and not financially dependent on the deceased, is entitled to compensation on account of death of the deceased or not?

9. In **Manjuri Bera v. Oriental Insurance Co. Ltd. & another¹**, the Apex Court has considered the question whether a married daughter, not dependant on the deceased, is entitled to file a claim petition for the death of her father. While answering the said question, the Apex Court held that *“even though there is no loss of dependency, the claimant, if he or she is a legal representative, will be entitled to compensation, the quantum of which shall not be less than the liability under Section 140 of the Act”*.

10. In **Dr.Gangaraju Sowmini v. Alavala Sudhakar Reddy and another²**, a Full Bench of erstwhile A.P. High Court, duly placing reliance on the judgment in **Manjuri Bera** (supra), held that an application for compensation can be made either by the injured or the legal representatives of the deceased. Dependency is a matter,

¹ (2007) 10 SCC 643

² AIR 2016 Hyderabad 162

which would have a bearing on the issue with regard to fixation of compensation and apportionment of compensation if there are more than one claimant. It is apt to reproduce the relevant observations as contained in paras 14 and 16 of the judgment, which read thus:

"14. In view of the plain language under Section 166 of the Motor Vehicles Act, 1988, which is a substantive provision for making application for compensation, it is clear that either the injured person or the legal representative of the deceased, are entitled to make an application for award of compensation. Dependency is a matter, which will have a bearing on the issue with regard to fixation of compensation and apportionment of compensation if there are more than one claimant, but at the same time, in view of the plain and unambiguous language used under Section 166 of the Motor Vehicles Act, the term legal representative does not mean dependant only. It is fairly well settled that the legal representative is one who can represent the estate of the deceased. Further, in the judgment in Manjuri Bera's case the Honble Supreme Court has held that the no fault liability envisaged under Section 140 of the Motor Vehicles Act is distinguishable from the rule of strict liability. In the aforesaid judgment, it is further held that right to make an application has to be considered in the background of right to entitlement. It is further held that while assessing the quantum of compensation, the multiplier system is applied because of deprivation of dependency. In the same judgment, it is also held that since the amount to be awarded under Section

140 of the Motor Vehicles Act is a fixed/crystalised amount, the same is to be considered as a part of the estate of the deceased. Apart from the same, there can be a claim for compensation under other conventional heads which are to be necessarily incurred in the case of deaths.

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16. In view of the clear and unambiguous language under Section 166 of the Motor Vehicles Act, it is clear that application can be made either by the injured or the legal representatives of the deceased. Though legal representative is not defined under the provisions of the Motor Vehicles Act, 1988, from Rule 2(g) of the A.P.Motor Vehicles Rules, 1989, it is clear that the definition of legal representative is given same meaning as defined under Section 2(11) of the Code of Civil Procedure. In view of the judgment of Honble Supreme Court in Manjuri Beras case, it is clear that the compensation which is payable on account of no fault liability will form part of the estate of deceased. In that view of the matter, there is no basis for contending that the application is to be filed only by the dependants. As we have held that dependency is a matter to be taken into consideration for award of compensation and merely because one is not dependant, that by itself, is no ground for not entertaining any claim made for grant of compensation under the Motor Vehicles Act. In view of the clear language under Section 166 of the Act and in view of the judgment of Honble Supreme Court in Manjuri Beras case, wherein, it is held that the compensation to be awarded under Section 140 of the Motor Vehicles Act will form part of the estate of deceased, and further, as the Act also provides for compensation on other conventional heads, we are of the view that the non-dependant also can

lay a claim by filing application under Section 166 of the Act. It is also to be noticed that the situations may arise, where, one may have suffered injuries initially but ultimately after filing a claim, may have succumbed to such injuries also. In such an event, lot of amount would be spent towards hospitalisation etc., and as already discussed in the judgment of Hon'ble Supreme Court in Montford Brothers case, it is common in the Indian society, where, the members of the family who are not even dependant also can extend their support monetarily and otherwise to the victims of accidents to meet the immediate expenditure for hospitalization etc., in such cases, unless the legal representatives are allowed to continue the proceedings initiated by the person who succumbs to injuries subsequently, such claims will be defeated and that will also defeat the very object and intentment of the Act. Any such measure would be wholly unequitable and unjust. Plainly, that would never be intent of any piece of legislation. For the aforesaid reasons and in view of the language under Section 166 of the Motor Vehicles Act, 1988 r/w. Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, we are of the view that even the legal representatives who are non- dependants can also lay a claim for payment of compensation by making application under Section 166 of the Motor Vehicles Act."

10. Recently, in **National Insurance Company Limited Vs. Birender and Others**³, the Apex Court held that as per the proposition laid down in **Manjuri Bera** (Supra), the

³ (2020) 11 SCC 356

legal representatives are entitled to claim compensation and not to the limit of conventional heads i.e. fixed amount of loss of estate, but as per the quantified and calculated loss of estate that the deceased would have left and the same is to be awarded to the legal representatives as inherited by them.

11. Therefore, in view of the law laid down by the Apex Court in **Manjuri Bera** (supra), the claimant, who is not financially dependent on the deceased, is entitled to Rs.50,000/- under Section 140 of the Motor Vehicles Act. Apart from the above, as per the law laid down by the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others**⁴, the claimant also entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, in all the claimant is entitled to a compensation of Rs.80,000/-.

12. In the result, the appeal is allowed in part and the appellant/claimant is granted compensation of Rs.80,000/- with interest @ 7.5% per annum from the date

⁴ 2017 ACJ 2700

of petition till the date of realisation. The respondent Nos.1 and 2 are directed to deposit the said amount within three months from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

07.12.2022
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THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 2358 of 2015

DATE: -12-2022