

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.2098 of 2015

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-X Additional Chief Judge, City Civil Court, Hyderabad in M.V.O.P. No.667 of 2014 dated 25.06.2015, the present appeal is filed by the claimants-petitioner Nos.1 to 5.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. According to the petitioners, on 14.12.2013 at about 9.00 p.m. the deceased Shaik Rafee along with his relatives and villagers was proceeding in his auto bearing No. AP.20.TB.5315 from Penagadapa to Chandragunda and when the auto reached near the outskirts of Tipenapally village Thanda, lorry bearing No. TN.34.Q.8489 came from the opposite direction and dashed their auto in rash and negligent manner with high speed, due to which, the auto crushed under front wheels of the lorry. Immediately they were shifted to Government Hospital, Kothagudem, Khammam for

treatment, where the doctors opined that they were brought dead.

4. Respondent No.1 remained ex parte. Respondent No.2 filed counter disputing the manner of accident, age, avocation and income of the deceased and further contended that the amount claimed by the petitioners is highly excessive and prays to dismiss the petition.

5. In view of the above pleadings, the Tribunal raised the following issues:

- 1) Whether the accident which occurred on 14.12.2013 at about 4-30 p.m. was due to the rash and negligent driving of the driver of crime lorry bearing No. TN.34.Q.8489 and death of deceased was result of fatal injuries in such accident?
- 2) Whether the petitioners are entitled for compensation, and if so, to what quantum and to whom such quantum is recoverable?
- 3) To what relief?

6. In order to prove the issues, PWs.1 to 4 were examined and got marked Exs.A-1 to A-14. On behalf of respondent No.2, none were examined and Ex.B1 got marked.

7. On considering the oral and documentary evidence on record, the Tribunal has awarded an amount of Rs.8,01,000/- towards compensation to the appellant Nos.1 to 3 and 5/ claimant Nos.1 to 3 and 5 against the respondent Nos.1 and 2 jointly and severally, along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of deposit, as against the claim of Rs.30 lakhs laid by the appellants-claimants.

8. Heard the learned counsel for the appellants-claimant Nos.1 to 7 and the learned Standing Counsel for the second respondent-Insurance Company. Perused the material available on record.

9. The learned counsel for the appellants had submitted that the claimants have claimed a sum of Rs.30 lakhs on the ground that the deceased was aged about 25 years, and he was the owner-cum-driver of the auto and was earning Rs.20,000/- per month. However, the learned Tribunal has taken the income of the deceased as Rs.4,000/- per month which is very less and therefore, prays to allow the appeal.

10. Learned counsel appearing for the respondent No.2-Insurance Company submits that the Tribunal has awarded reasonable compensation, which needs no interference by this Court.

11. With regard to the manner of accident, there is no dispute. However, the Tribunal has rightly held that the accident took place due to the rash and negligent driving of the offending vehicle by its driver.

12. Coming to the quantum of compensation, according to the petitioners, the deceased was the owner of passenger auto and was getting an amount of Rs.25,000/- per month and contributing the same to his family members. According to the evidence of PW-2, who is the eyewitness to the accident, the accident occurred due to the rash and negligent driving of the driver of lorry. Further the evidence of PWs.2 and 3 shows that the deceased used to give his auto for rental to PWs.2 and 3. However, the Tribunal had taken the income of the deceased at Rs.4,000/- per month, which appears to be too meager. Therefore, considering the evidence of PWs.2 and 3,

age and avocation of the deceased as auto driver, his actual income can be taken at Rs.6,000/- per month. Further, future prospects were not considered by the Tribunal. Thus, in light of the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimants are entitled to future prospects @ 40% of his income, since the age of the deceased was 32 years as per the postmortem examination report. Then it comes to Rs.8,400/- (6,000 + 2400 = 8,400/-).

13. Coming to the dependency, though the appellants/claimants are seven in number, the Tribunal had rightly taken the wife, two children and mother of the deceased as dependants, since there is no evidence from the father and major sisters of the deceased to show that they are not having any independent income. So, the dependants are four in number. As the dependants are four in number, 1/4th of his income is to be deducted towards his personal and living expenses. Then the contribution of the deceased would be Rs.6,300/- per month (8400 – 2100 = 6300/-). Since the deceased was aged about 32 years at the time of accident, the

¹ 2017 ACJ 2700

appropriate multiplier in light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**² would be “16”. Then the loss of dependency would be Rs.6300/- x 12 x 16 =**Rs.12,09,600/-**. In addition thereto, under the conventional heads, the claimants are granted **Rs.77,000/-** as per the decision of the Apex Court in **Pranay Sethi** (supra). Thus, in all, the compensation is enhanced from Rs.8,01,000/- to **Rs.12,86,600/-**. Thus, in all, the compensation is awarded as follows:

Sl.No.	Description	Amount awarded
1.	Loss of dependency (Rs.6300/- x 12 x 16 = Rs.12,09,600/-)	Rs.12,09,600/-
2.	Conventional heads	77,000-00
	Total:	Rs.12,86,600/-

14. With regard to the liability, the Tribunal rightly held that, since the policy of the offending vehicle was in force as on the date of accident, the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

² 2009 ACJ 1298 (SC)

15. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.8,01,000/- to **Rs.12,86,600/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of this order till the date of realization, to be payable by the respondent Nos.1 and 2 jointly and severally. The amount of compensation shall be apportioned among the appellant Nos.1 to 3 and 5/ claimant Nos.1 to 3 and 5 in the ratio as ordered by the Tribunal. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the amount. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

23.09.2022
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M.G.PRIYADARSINI,J