

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

M.A.C.M.A.No.354 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the award and decree, dated 09.09.2014 passed in M.V.O.P.No.1002 of 2011 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District & Sessions Judge, Rangareddy District at L.B. Nagar, 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 wife, daughters and son of P. Rama Rao (hereinafter referred to as "the deceased") filed a petition, claiming compensation of Rs.8,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 09.10.2011. It is stated that on 09.10.2011 while the deceased was proceeding by walk at Majidpur X Roads, driver of a Tavera Car bearing No.AP 01 W 3744 came in a rash and negligent manner and hit the deceased. As a result, the deceased

sustained fatal injuries and succumbed to the injuries. Immediately, he was taken to Gandhi Hospital, Hyderabad for postmortem examination and later the body was handed over to the appellants for conducting last rites. The Police, Shamirpet Police Station, registered a case in Crime No.2672 of 2011 for the offence punishable under Section 304-A of I.P.C against the driver of Tavera Car bearing No.AP 01 W 3744 and took up the investigation. It is stated that prior to the accident, the deceased was hale and healthy and was working with M/s Raagi Pipes Company and earning Rs.10,000/- per month. Since the accident occurred due to the rash and negligent driving of the driver of Tavera Car, the claimants laid the claim-petition against respondent Nos.1 and 2, who are the owner and the insurer of the car, respectively.

4. Respondent No.1 filed counter denying the averments in the petition and sought for dismissal of the petition. Respondent No.2 had also filed counter denying the averments in the petition including the manner in which the accident took place, involvement of crime vehicle and registration of criminal case as claimed by the claimants and also the age, occupation and earnings of the deceased. It is specifically contended that

the driver of the crime vehicle was not having valid and effective driving license at the time of the accident and as such, respondent No.2-Insurance Company is not liable to pay the compensation. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

5. On the basis of the above pleadings, the Tribunal framed the following issues:

- 1) Whether the deceased namely P. Rama Rao died in a Motor Vehicle accident on 09.10.2011 due to rash and negligent driving of Tavera Car bearing No.AP 01 W 3744 by its driver?
- 2) What was the age and income of the deceased?
- 3) Whether the Petitioners are entitled to claim compensation and if so, how much amount and from which of the Respondents?
- 4) To what relief?

6. During trial, on behalf of the claimants, P.W.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, R.Ws.1 was examined and Exs.B1 to B4 were marked.

7. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of Tavera Car and accordingly,

awarded an amount of Rs.5,54,000/- with interest @ 7% per annum from the date of petition till the date of realization to be paid by the respondents.

8. Heard and perused the material available on record.

9. 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.

10. Learned Standing Counsel for respondent No.2 submits that the issue with regard to the future prospects has been considered by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra) and as per that judgment, the claimants are entitled 25% amount towards future prospects. It is further submitted that the compensation towards non-pecuniary damages has been rightly granted by the Tribunal and the same need not be enhanced.

11. A perusal of the impugned award discloses that the Tribunal has framed Issue No.1 as to whether the accident had

¹ 2017 ACJ 2700

occurred due to rash and negligent driving of the Tavera Car by its driver, to which the Tribunal after considering the evidence of P.W.1 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of Tavera Car and has answered in favour of the claimants and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal.

12. Insofar as the quantum of compensation is concerned, considering the age and avocation of the deceased, the Tribunal has rightly taken the income of the deceased at Rs.4,500/- per month. Since the deceased was aged about 45 years, the claimants are entitled to addition of 25% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.6,250 (Rs.5,000/- + Rs.1,250/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following **Sarla Verma v. Delhi Transport Corporation**² as the dependents are four in number. Since the age of the deceased was 45 years at the time of the accident, the

² 2009 ACJ 1298 (SC)

appropriate multiplier is '14' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation and another** (supra). Adopting multiplier 14, the total loss of earnings would be Rs.4,688/- x 12 x 14 = Rs.7,87,584/-. That apart, the claimants are also entitled to Rs.77,000/- towards loss of estate and funeral expenses, as per **Pranay Sethi's** case (supra). Further, following the decision of the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others**³, claimant Nos.2 to 4, being the children of the deceased are granted filial consortium of Rs.40,000/- each. Thus, in all, the claimants are granted the compensation of Rs.9,84,584/-.

13. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.8,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

14. In **Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another**⁴, the

³ (2018) 18 SCC 130

⁴ (2011) 10 SCC 756

Apex Court while referring to ***Nagappa Vs. Gurudayal Singh***⁵ 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.”

15. 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.

16. Accordingly, the M.A.C.M.A. is allowed and the compensation amount awarded by the Tribunal is hereby enhanced from Rs.5,54,000/- to Rs.9,84,584/-. The enhanced amount will carry interest at 7.5% p.a. from the date of award passed by the Tribunal till the date of realization. The compensation amount shall be deposited within a period of two months from the date of receipt of a copy of this order. The

⁵ 2003 ACJ 12 (SC)

enhanced amount shall be apportioned among the claimants in the same proportion as was ordered by the tribunal. However, the claimants are directed to pay deficit court fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

27.10.2022
Pvt/lpd