

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.419 of 2015

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the XI Additional Chief Judge, City Civil Court, Hyderabad in M.V.O.P. No.1671 of 2012 dated 28.08.2014, the present appeal is filed by the claimants.

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

3. According to the petitioners, on 20-05-2012 at about 13.30 hours the deceased-P.Mallaiah along with his wife Yadamma got down from the RTC bus at Jodimetla X roads and walking by the side of road, meanwhile, one Mahindra Maximo bearing No. AP 20 TA 6051 being driven by its driver came from Uppal side in rash and negligent manner and dashed the deceased. Due to which, the deceased fell down and sustained grievous injuries on the vital parts of the body. Immediately he was shifted to Gandhi Hospital, Secunderabad for treatment. While undergoing treatment, he was succumbed to injuries on 22.05.2012. According to the claimants, the deceased was aged 44 years and earning

Rs.5,000/- per month as a mason. Thus, the petitioners are claiming compensation of Rs.9,00,000/- under various heads.

4. Respondent Nos.1 and 2 filed separate counters disputing the manner in which the accident occurred, age, avocation and income of the deceased. It is further contended that the claim is excessive.

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

- 1) *Whether the accident occurred on 20.5.2012 due to rash and negligent driving of the driver of the Mahindra Maximo vehicle bearing No. AP 20 TA 6051 causing death of the deceased?*
- 2) *Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?*
- 3) *To what relief?*

6. In order to prove the issues, on behalf of the petitioners, PWs.1 to 3 were examined and got marked Exs.A-1 to A-7. On behalf of respondent No.2, no witnesses were examined; however, copy of insurance policy was marked as Ex.B1.

7. On considering the oral and documentary evidence on record, the Tribunal has awarded an amount of Rs.6,00,000/- towards compensation

to the appellants-claimants 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 realization.

8. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the second respondent-Insurance Company. Perused the material available on record.

9. The learned counsel for the appellants-claimants has submitted that although the claimants have established the fact that the death of the deceased-P.Mallaiah was caused in a motor accident, the Tribunal awarded meager amount.

10. The learned Standing Counsel appearing on behalf of respondent No.2-Insurance Company sought to sustain the impugned award of the Tribunal contending that the Tribunal after considering all aspects has awarded adequate compensation of Rs.6,00,000/- and the same needs no interference by this Court.

11. With regard to the manner of accident, there is no dispute. However, after evaluating the evidence of PWs.1 and 2 coupled with the documentary evidence available on record, the Tribunal held that the

accident took place due to the rash and negligent driving of the driver of the jeep bearing No.APR 9047 which resulted the death of the deceased Mallaiah.

12. Coming to the quantum of compensation, according to the evidence of PW-1, the deceased was a mason and getting Rs.12,000/- per month and used to contribute the same to his family. PW-3 employer of the deceased also deposed that he is the Contractor and the deceased Mallaiah worked as a mason till his death and he was paid Rs.12,000/- per month towards salary. However, as no register or appointment letter is produced by PW-3, the Tribunal has taken the income of the deceased at Rs.5,000/- per month, which is very less. Therefore, considering the avocation of the deceased as mason and the accident occurred in the year 2012, the income of the deceased can be taken at Rs.6,000/- per month. Further, 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 @ 25% of his income, since the deceased was aged 44 years. Then it comes to Rs.7,500/- (6,000 + 1,500 = 7,500/-). From this, 1/3rd is to be deducted towards personal expenses of the deceased following ***Sarla***

¹ 2017 ACJ 2700

*Verma v. Delhi Transport Corporation*² as the dependents are two in number. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.5,000/- per month (7,500 – 2,500 = 5,000/-). Since the deceased was 44 years by the time of the accident, the appropriate multiplier is ‘14’ as per the decision reported in *Sarla Verma v. Delhi Transport Corporation* (supra). Adopting multiplier ‘14’, the total loss of dependency would be Rs.5000/- x 12 x 14 = **Rs.8,40,000/-**. In addition thereto, the claimants are also entitled to **Rs.77,000/-** under the conventional heads as per **Pranay Sethi’s** (supra). Thus, in all the claimants are entitled to **Rs.9,17,000/-**.

13. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the driver of the offending vehicle, which was insured with the respondent No.2-Insurance Company and the policy was in force as on the date of accident. Hence, respondent Nos.1 and 2 are jointly and severally liable to pay compensation.

² 2009 ACJ 1298 (SC)

14. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.6,00,000/- to **Rs.9,17,000/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization, to be payable by the respondent Nos.1 and 2 jointly and severally. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. The claimants shall pay deficit Court fee on the enhanced compensation, since the initial claim was for Rs.9,00,000/-. On such payment of court fee only, the claimants are entitled to withdraw the amount. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

01.12.2022

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