

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.67 of 2017

JUDGMENT:

Dissatisfied with the quantum of compensation awarded in the order and decree, dated 20.10.2016 passed in M.V.O.P.No.150 of 2014 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short “the Tribunal”), the appellants/claimants 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 filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.10,00,000/- for the death of one Syed Ameer (hereinafter referred to as “the deceased”), who died in a motor vehicle accident that occurred on 10.08.2013. It is stated that on the fateful day, while the deceased was proceeding on his cycle to his house, Auto bearing No.AP25W6354, owned by respondent No.1 and insured with respondent No.2, being driven by its driver

came in a rash and negligent manner and dashed the cycle of the deceased. As a result, the deceased sustained grievous injuries and succumbed to the injuries on the same day at 21.45 hours in Gandhi Hospital, Secunderabad. According to claimants, the deceased was 50 years old and was earning Rs.15,000/- by working as Carpenter and therefore, they filed the O.P. claiming compensation of Rs.10.00,000/- against the respondents.

4. Before the tribunal, while the respondent No. 1 remained ex parte, respondent No. 2, insurance company, filed counter denying the manner in which the accident took place, including the age, avocation and income of the deceased. It is also stated that the quantum of compensation claimed is excessive, baseless and prayed to dismiss the petition.

5. In view of the above pleadings, the tribunal framed the following issues:

- 1) Whether on 10.08.2013 at about 21.45 hours at Arsapally X Road, Nizamabad, accident occurred due to rash and negligent driving of auto No.AP25W6354 by its driver?

- 2) Whether Syed Ameer received injuries in that accident and died of the injuries?
- 3) Whether the petitioners are entitled for compensation? If so, to what amount and from which of the respondents?
- 4) To what relief?

6. In order to prove the issues, PWs.1 and 2 were examined and Exs.A1 to A6 got marked on behalf of the petitioner. On behalf of respondents, no witnesses were examined. However, copy of insurance policy was marked as Ex.B1.

6. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.4,87,000/- towards compensation to the appellants-claimants along with costs and interest @ 7.5% per annum against the respondent Nos.1 and 2 jointly and severally, as against the claim of Rs.10,00,000/-.

7. Heard the learned the counsel for the appellants and the learned Standing counsel for the respondent No.2-Insurance Company and perused the material available on record.

8. Learned counsel for the claimants has contended that though the claim was for Rs.10,00,000/-, the Tribunal has granted a

meager amount without considering the fact that the deceased was a Carpenter and used to earn Rs.15,000/- per month. In the absence of any contra evidence adduced by the insurance company, the Tribunal ought to have awarded the total compensation as claimed by the claimants.

9. On the other hand, the learned Standing Counsel appearing on behalf of second respondent-Insurance Company sought to sustain the impugned award of the Tribunal contending that considering the manner of accident and the age, avocation and income of the deceased, the Tribunal has awarded reasonable compensation and the same needs no interference by this Court.

10. A perusal of the impugned judgment shows that after considering the evidence of P.Ws.1 and 2 coupled with the documentary evidence, the Tribunal has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the auto. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of auto.

11. With regard to the quantum of compensation, according to the petitioners, the deceased was a Carpenter and earning Rs.15,000/- per month. However, since the petitioners did not produce any oral or documentary evidence to prove the income of the deceased, the tribunal had taken the income of the deceased at Rs.3,000/- per month, which is very less. Therefore, considering the age and avocation of the deceased as a Carpenter and the accident is of the year 2013, the income of the deceased can be taken at Rs.4,500/- 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 50 years. Then it comes to Rs.5,625/- (4,500 + 1,125 = 5,625/-). From this, 1/3rd of the actual income is to be deducted towards personal expenses of the deceased following ***Sarla Verma v. Delhi Transport Corporation***² as the dependants are two in number. After deducting 1/3rd of the amount towards his personal and living expenses, the contribution of the deceased to the family

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

would be Rs.3,750/- ($5,625 - 1,875 = 3,750/-$) per month. Since the deceased was 50 years by the time of the accident, the appropriate multiplier is '13' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation*** (supra). Adopting multiplier '13', the total loss of dependency would be Rs.3750/- x $12 \times 13 = \text{Rs.5,85,000/-}$. 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.6,62,000/-**.

12. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.4,87,000/- to **Rs.6,62,000/-**. The enhanced amount shall carry interest at 7% 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 of compensation shall be apportioned among the appellants-claimants 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.

SMT. M.G.PRIYADARSINI, J

06.01.2023
Pgp/pvt