

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

M.A.C.M.A. No. 76 of 2018

JUDGMENT:

This appeal is filed by the claimants, aggrieved by the order and decree dated 15.11.2017 made in M.V.O.P.No.226 of 2015 on the file of the Motor Accident Claims Tribunal-VII Additional District Judge, Mahabubnagar (for short "the Tribunal"). By the impugned order the Tribunal has dismissed the claim-petition filed by the claimants under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Md. Asif, the deceased, who died in a motor vehicle accident that occurred on 24.06.2014.

2. The appellants herein, who are claimants before the Tribunal, being the parents of the deceased-Md.Asif, filed the O.P. under Section 166 of the Motor Vehicles Act seeking compensation of Rs.10,00,000/- for the death of the deceased in the accident that occurred on 24.06.2014. According to them, on the fateful day, the deceased left the house on a motor bike bearing No.AP 22 L 2770 to go to

college and at about 16:15 hours, on the way when he reached near Annapurna Garden Function Hall, Bhageeratha Colony, Mahabubnagar, lorry bearing No.AP 35 T 2076, owned by respondent No.2 and insured with respondent No.3, being driven by respondent No.1 in a rash and negligent manner, dashed the motorbike of the deceased. As a result, the deceased sustained severe injuries. Immediately, he was shifted to Government Hospital, Mahabubnagar and on the way to the hospital he succumbed to injuries. According to the claimants, the deceased was earning Rs.6,000/- per month. Therefore, they laid the claim against the respondents.

3. After considering the claim and counters filed by the respondents, the Tribunal has dismissed the claim-petition filed by the claimants holding that the claimants failed to prove the accident more particularly involvement of crime vehicle and rash and negligence attributed to the driver of the crime vehicle and further, the evidence let in by the claimants and documents exhibited are creating doubt on

the genuineness of their claim. Aggrieved by the same, the claimants filed the present appeal.

4. Heard both sides and perused the material on record.

5. Learned counsel appearing for the claimants contended that the Tribunal has erroneously dismissed the claim-petition on the ground that the claimants failed to prove the accident more particularly involvement of crime vehicle, rash and negligence attributed to driver of crime vehicle and also the documents produced by the claimants. It is contended that initially a crime was registered against the unknown vehicle but after completing investigation, the Investigating Officer filed charge sheet, Ex.A7, stating that the accident occurred only due to the rash and negligent driving of the driver of the crime vehicle, Lorry bearing No.AP 35 T 2076. As the driver of the crime vehicle has admitted in his cross-examination that the accident taken place on 24.06.2014, the Tribunal erroneously dismissed the claim-petition stating that the claimants failed to prove

the involvement of the crime vehicle. Insofar as the quantum of compensation is concerned, it is contended that though the claimants claimed that the deceased was working as part time cell phone mechanic and earning Rs.6,000/- per month, but the Tribunal has erroneously taken the notional income at Rs.25,000/- per annum. It is further submitted that as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimants are entitled to addition of 40% towards future prospects to the established income of the deceased and Rs.33,000/- under conventional heads. Therefore, the learned counsel sought to set aside the findings of the Tribunal and allow the appeal by awarding just and reasonable compensation.

6. Per contra, the learned Standing Counsel for the Insurance Company submits that the Tribunal has rightly

¹ 2017 ACJ 2700

dismissed the claim-petition as the crime vehicle was implicated in order to claim compensation.

7. The point that arises for consideration in this appeal is whether the claimants have proved the involvement of the Lorry bearing No.AP 35 T 2076 in the accident and, if so, what is the just and reasonable compensation to which the claimants are entitled to?

8. It is the case of the claimants that 24.06.2014 while the deceased was proceeding on his motor bike bearing No.AP 22L 2770 and when he reached near Annapurna Garden Function Hall, Bhageeratha Colony, Mahabubnagar, lorry bearing No.AP 35 T 2076 being driven by respondent No.1 in a rash and negligent manner at high speed, dashed against the motorbike of the deceased, due to which, the deceased sustained grievous injuries. Immediately after the accident, while shifting the deceased to Government Hospital, Mahabubnagar, he succumbed to injuries. Admittedly, basing on the complaint lodged by the father of the deceased, a case in

Crime No.207 of 2014 was registered against an un-known vehicle. After examining the injured and eye witnesses and on completion of investigation, the Investigating Officer laid the charge sheet against respondent No.1 stating that he is responsible for causing the accident.

9. It is also to be noted that in a claim for compensation under Section 166 of Motor Vehicles Act, 1988, the claimant has to prove the incident only on preponderance of probabilities and the standard of proof beyond reasonable doubt is not required as held by the Hon'ble Supreme Court in the decision rendered in **Bimla Devi Vs. Himachal Road Transport Corporation**². After the investigation, the investigating officer has filed charge sheet against respondent No.1 concluding that the accident occurred only due to his negligence, as he drove the offending vehicle in rash and negligent manner. Further, during the course of cross-examination, respondent No.1, driver of the crime vehicle, has admitted the accident. He

² AIR 2009 SC 2819

also admitted that immediately after the accident he has absconded due to fear. Further, in C.C.No.213 of 2015, respondent No.1 was tried before the Special Judicial Magistrate of First Class, Prohibition and Excise, Mahabubnagar, for the offences punishable under sections 304-A and 337 of I.P.C. Before the Magistrate Court, the Investigating Officer, who conducted the investigation, was examined as P.W.13 and in his evidence he deposed that on 08.08.2014 the accused, respondent No.1, driver of the crime vehicle, came to him and voluntarily surrendered before him confessing the guilt. He further deposed that after completion of investigation, he filed the charge sheet against respondent No.1. In view of above reasons, this Court is of the opinion that the tribunal has erroneously dismissed the O.P. For the aforesaid reasons, this Court is inclined to set aside the findings of the Tribunal holding that the accident occurred only due to the rash and negligent driving of respondent No.1.

10. As far as the quantum of compensation is concerned, though the claimants have claimed that the deceased was earning Rs.6,000/- per month by working as cell phone mechanic at Zameer Mobile Care, Mahabubnagar, the Tribunal has taken the notional income at Rs.25,000/- per annum. In ***Latha Wadhwa vs. State of Bihar***³, the Apex Court held that even there is no proof of income and earnings, the income can be reasonably estimated but in the instant case the claimants have examined the employer of the deceased as P.W.3. Therefore, considering the age of the deceased and the prevailing minimum wages at the relevant point of time, this Court is inclined to fix the monthly income of the deceased at Rs.5,000/- per month. Considering the fact that the age of the deceased at the time of accident was aged about 18 years, the claimants are entitled to addition of 40% towards future prospects to the established income, as per the decision of the Hon'ble Supreme Court in ***Pranay Sethi*** (supra). Therefore, the

³ (2001) 8 SCC 197

future monthly income of the deceased comes to Rs.7,000/- (Rs.5,000/- + Rs.2000/-). From this, 50% is to be deducted towards personal expenses of the deceased as the deceased was unmarried at the time of the accident. After deducting 50% therefrom towards his personal and living expenses, the contribution of the deceased to the family comes to Rs.3,500/- per month. Since the age of the deceased was 18 years as held by the Tribunal, the appropriate multiplier is '18'. Adopting multiplier '18', the total loss of dependency comes to Rs.3,500/- x 12 x 18 = Rs.7,56,000/-. That apart, the claimants are entitled to Rs.33,000/- under the conventional heads as per the decision of the Apex Court in **Pranay Sethi** (supra). Furthermore, they are granted Rs.40,000/- each towards filial consortium as per the decision of the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others**⁴. Thus, in all, the claimants are entitled to Rs.8,69,000/-.

⁴ (2018) 18 SCC 130

11. Accordingly, the M.A.C.M.A. is allowed in part. The claimants are entitled to Rs.8,69,000/- towards compensation together with interest at 6% per annum from the date of filing of the O.P. before the tribunal till the date of realization. Out of the said compensation, both the claimants are entitled to equal share. Respondent Nos.2 and 3 are jointly and severally liable to pay the aforesaid compensation. Time for depositing the amount is two months from the date of receipt of a copy of this judgment. On such deposit, both the claimants are permitted to withdraw their share amount without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

11.01.2023
Tsr

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

M.A.C.M.A. No. 76 of 2018

DATE: 11-01-2023