

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

M.A.C.M.A. No.878 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 02.03.2015 passed in M.V.O.P.No.393 of 2013 on the file of the Chairman MACT/Principal District Judge, R.R.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, son of one A.Laxmaiah (hereinafter referred to as "the deceased") filed a petition, claiming compensation of Rs.14,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 01.10.2012 at about 4.50 P.M lthe deceased Laxmaiah was proceeding on his motorcycle bearing No.AP.25Q 4762 from Venkataramana Colony Towards L.B.Nagar and when he

reached H.P.Petrol Bunk at Omkarnagar, a Tempo Track bearing No.AP 29TA 3818 came at a high speed in a rash and negligent manner without following the traffic rules and dashed against the motorcycle, due to which he fell on the road, suffered grievous injuries and died on the spot. Based on the complaint police registered Cr.No.1402/2012 by stating that accident occurred only due to the rash and negligent driving of the Tempo Track driver. It is further contended that Mr. Laxmaiah, was aged about 52 years and was earning Rs.19,216/- p.m.due to death of the deceased, the family members suffer financial loss, social and moral support. Since the accident occurred due to the rash and negligent driving of the rider of the tempo truck, the claimants laid the claim-petition against respondent Nos.1 and 2, who are the owner and insurer of the said tempo truck bearing No.AP 29 TA 3818, respectively.

4. Before the Tribunal, respondent No.1 remained *ex parte*.

5. Respondent No.2, filed counter denying the averments in the petition including the manner in which the accident took place, age, income and avocation of the deceased. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

6. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the deceased died in the accident on 01.10.2012 due to the rash and negligent driving of the tempo track bearing No.AP 29 TA 3818 by its driver?
- 2) Whether the petitioners are entitled to pay any compensation? If so, to what amount and from whom?
- 3) To what relief?

7. During trial, on behalf of the claimants, P.Ws.1 to 3 including the petitioner No.1 herein and marked Exs.A1 to A9 were marked. The respondents did not choose to adduce any oral evidence, but marked the policy as Ex.B1.

8. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the rider of the tempo tracks bearing No.AP 24TA 3818 and accordingly awarded an amount of Rs.14,00,000/- with interest @ 7.5 % per annum from the date of petition till the date of realization to be paid by the respondent Nos.1 and 2 jointly and severally.

9. Heard and perused the material available on record.

10. The learned Counsel for the claimants has contended that though the claimants have proved that the deceased was earning Rs.19,621/- per month by producing the oral evidence of Exs.A6 & 9 documentary evidence i.e., Ex.A6 pay slips shows that the deceased was drawing an amount of Rs.19,262/- in the month of April,2012 while Ex.A9 i.e the pay slip for the month of August, 2012 shows that the deceased was drawing Rs.19,621/- per month while calculating the loss of earnings.

11. Learned Standing Counsel for the 2nd respondent submitted that the Tribunal erred in awarding

Rs.3,25,000/- under conventional heads and the claimants are entitled to only Rs.77,000/- under conventional heads as per the law laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra).

12. A perusal of the impugned judgment discloses that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the tempo truck by its rider, to which the Tribunal after considering the evidence of Ex. A6 and 9 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the rider of the tempo truck 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 that the accident occurred due to the rash and negligent driving of the rider of tempo truck bearing No.AP 29 TA 3818.

13. Insofar as the quantum of compensation is concerned, as per Ex.A6, pay slips the deceased was driver in Andra Pradesh State Road Transport Corporation and the income of the deceased Rs.19,262/- per month. Here the same can be considered. Since the deceased was aged about 52 years, the claimants are entitled to addition of 15% 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.22,151/- (Rs.19,262/- + Rs.2,889/-). Since the number of dependant family members of the deceased was 2, the deduction towards personal and living expenses shall be at the rate of 1/3 of the said amount, i.e., Rs.14,767/- per month. Since the age of the deceased was 52 years at the time of the accident, the appropriate multiplier is '11' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation and another**¹. Adopting multiplier 11, his total loss of earnings would be Rs.14,767/- x12 x11 = Rs.19,49,244/-. The claimants are

¹ (2009) 6 SCC 121

also entitled to Rs.77,000/ towards conventional heads as per **Pranay Sethi's** case (supra) and as per the judgment in case of **Magma General Insurance Company Limited v. Manu Ram Alias Chururu Ram and others**², Thus, in all the claimants are entitled to Rs.20,26,244 /-.

14. Accordingly, the M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.14,00,000/- to Rs.20,26,244 /-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization, payable by respondents 1 and 2 jointly and severally. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

04.01.2023

gv

² (2018) 18 SCC 130

