

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

M.A.C.M.A. No. 1162 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 30.07.2014 made in O.P.No.2681 of 2011 on the file of the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, Hyderabad (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

2. For the sake of convenience, hereinafter, the parties are referred to as per their array before the tribunal.

3. Brief facts of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.10,00,000/- for the death of one K.Naga Raju (hereinafter referred to as "the deceased") in a motor vehicle accident that occurred on 05.11.2011. According to the claimants, on the fateful day, the deceased, along with his friend, was proceeding on a motorcycle from Shapur to Dundigal. When they reached

near Anjaneyaswamy Temple, near Matrix company, IDA, the offending vehicle i.e., Tanker bearing No.MH 04 DS 8656, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner, in the process of overtaking a DCM Van, dashed the motorcycle. As a result, the deceased, who was pillion rider, received multiple injuries and died on the spot. It is stated that at the time of accident, the deceased was 21 years, studying 2nd year Engineering course and was earning Rs.15,000/- per month by giving tuitions. Due to sudden demise of the deceased, the claimants lost their source of income, love and affection and therefore, they filed the claim-petition seeking compensation of Rs.10.00 lakhs under various heads.

4. Before the Tribunal, while the respondent No. 1, owner of the offending vehicle, stood ex parte, the respondent No. 2 contested the claim denying the averments of the claim petition, including the age, avocation and income of the deceased and contended that

the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the claim, counter filed by respondent No.2 and the evidence, both oral and documentary brought on record, the Tribunal had arrived the total compensation at Rs.13,60,000/- but restricted the compensation amount to Rs.10,00,000/- on the ground that the claimants claimed only Rs.10,00,000/-. Challenging the same, the present appeal came to be filed by the claimants seeking enhancement.

6. Heard both sides and perused the record.

7. The learned Counsel for the appellants-claimants has contended that the Tribunal having arrived at that the claimants are entitled to the total compensation of Rs.13,60,000/- ought not to have restricted the same to Rs.10,00,000/- merely because the claim made in the O.P. was Rs.10,00,000/-. He further submits that even though the claimants sought meager amount, it is the duty of the

Tribunal to grant just compensation over and above the claimed amount, if they are entitled to and in the light of the judgment of the Apex Court in ***Nagappa v. Gurudayal Singh***¹ the claimants are entitled to more compensation and prayed to enhance the same. It is further contended that the claimants are also entitled to future prospects as per the law laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***².

8. The contention of the learned Standing Counsel appearing for respondent No.2-Insurance Company is that as the Tribunal granted the entire compensation amount as sought for by the appellants-claimants, they cannot be said to be the aggrieved persons within the meaning of Section 173 of the Motor Vehicles Act and hence, they cannot challenge the order of the Tribunal in the present appeal and prayed to dismiss the appeal. It is further

¹ (2003) 2 SCC 274

² 2017 ACJ 2700

contended that the deceased was only an engineering 2nd year student and taking into consideration of his future career, the Tribunal has taken the monthly income at Rs.15,000/- per month and in such circumstances, the question of granting future prospects does not arise.

9. There is no dispute with regard to the manner of the accident and the rash and negligent driving of the offending Lorry by its driver in causing the accident.

10. Insofar as the quantum of compensation is concerned, it is clear from the material available on record that the Tribunal has taken into consideration the oral and documentary evidence adduced by the parties, and following the procedure enunciated in law, arrived at the compensation entitled to by the claimants. However, as the claimants sought compensation, which is obviously lower in quantum than the calculated compensation, the Tribunal had awarded the compensation sought by the claimants, giving rise to the present appeal whereunder the

action of the Tribunal in restricting the compensation to the amount claimed, though they apparently are eligible to higher quantum of compensation, is challenged before this Court.

11. Under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only upto the amount claimed by the claimants. In an appropriate case, where from the evidence brought on record, if Tribunal/Court considers that claimants are entitled to get more compensation than the one claimed, the Tribunal may pass such award. Thus, the approach of the learned Tribunal in determining compensation only on the basis of amount of compensation claimed in the claim-petition and not appreciating the evidence led by the claimants is incorrect. Further, as per the decision of the Apex Court in ***Nagappa v. Gurudayal Singh and others*** (supra), there is no restriction for the Tribunal/Court in awarding compensation amount exceeding the claimed

amount. Further, in appropriate cases, the Court may permit amendment to the claim-petition.

12. In ***Ramla and others v. National Insurance Company Limited and others***³ the Apex Court held that there is no restriction in awarding compensation amount exceeding the claimed amount, since, the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award 'just compensation'. The Motor Vehicles Act is the beneficial and welfare legislation. A 'just compensation' is one which is reasonable on the basis of the evidence produced on record.

13. Moreover, in the instant case, the claimants filed I.A.No.2 of 2015 seeking permission to amend the claim amount to Rs.14,38,000/-, which was already allowed by this Court *vide* order, dated 29.07.2022.

14. Having regard to the facts and circumstances of the case and in view of the law laid down by the Apex Court

³ (2019) 2 SCC 192

referred to above, this Court is of the opinion that the claimants are entitled to the compensation of Rs.13,50,000/- under the head of loss of dependency arrived at by the Tribunal. As rightly contended by the learned Standing Counsel for the Insurance company the claimants are not entitled to future prospects inasmuch as the Tribunal taking into consideration the future career of the deceased student, fixed the monthly income at Rs.15,000/- per month. Insofar as the amount awarded under conventional heads is concerned, as per the principles laid down by the Apex Court in ***Pranay Sethi (supra)*** the claimants are entitled to Rs.33,000/- towards loss of estate and funeral expenses as against Rs.10,000/- as awarded by the Tribunal. Further, considering the fact that the claimants are the parents of the deceased, this Court is inclined to award a sum of Rs.40,000/- each to the claimants under the head of filial consortium as per the decision of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and***

others⁴. Thus, in all, the claimants are entitled to only Rs.14,63,000/-.

15. Accordingly, the M.A.C.M.A. is allowed in part. The compensation awarded by the Tribunal is hereby enhanced from Rs.10,00,000/- to Rs.14,63,000/-, together with interest @ 7.5% per annum from the date of petition till the date of realisation, payable by the respondents 1 and 2 jointly and severally. The said 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.

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⁴ (2018) 18 SCC 130

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