

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

M.A.C.M.A. No.4293 of 2008

ORDER:

This appeal is filed by the appellants/claimants seeking enhancement of the compensation granted in O.P.No.397 of 2005 by the Motor Accidents Claims Tribunal-cum-the Chief Judge, City Civil Court, Hyderabad, dated 18.10.2006.

2. Heard Mr. P. Ramakrishna Reddy, learned counsel appearing for the appellants/claimants and Mr. P. Bhanu Prakash, learned counsel appearing for the respondent/Insurance company.

3. The brief facts are that on 17-01-2005 at about 7:30 pm, the petitioner was travelling in an auto bearing No.AP 24V 707 from Yadagiri Gutta to Bhongir and the driver of the said auto drove the auto rashly and negligently and rammed into a stationed tractor cum trailer from behind. The deceased sustained serious injuries including head injury in the said accident. The deceased was immediately shifted to Gandhi Hospital, Secunderabad. The deceased breathed his last on the same day while undergoing treatment at the Gandhi Hospital, Secunderabad.

4. The respondent/insurance company has filed counter affidavit denying the manner of accident, rash and negligent driving on the part of the driver of the lorry and the amount claimed by the appellants/claimants.

5. The Tribunal on analyzing the evidence granted compensation of Rs.3,35,000/- with interest @ 6% per annum from the date of petition till

the date of deposit.

6. Learned counsel for the appellants/claimants, submit that the son of the appellants/claimants No.1 and grandson of appellants/claimants No.2 died in a road accident which took place on 17.01.2005. At the time of the accident, the age of the deceased was 21 years old. He submits that a claim petition was filed by the appellants/claimants claiming an amount of Rs.4,00,000/-, but the Court below has granted an amount of Rs.3,35,000/-. He submits that the multiplier that applies for the case of the deceased is 18 but the Court below has applied only 15. He submits that the deceased was earning an amount of Rs.5000/- per month.

7. Learned Counsel for the appellants/claimants has relied on the judgment of the Hon'ble Apex Court in *Minu Rout and another v. Satya Pradyumna Mohapatra and others* ¹. He submits that in the said case, the apex Court has taken the income of the Driver at Rs.6000/- per month. He submits that the appellants/claimants are also entitled to the said amount. He submits that under the head of loss of consortium, for both the appellants/claimants, no amount was granted by the Court below. He submits that as per the judgment of the apex court, the appellants/claimants are entitled for a compensation of Rs.10,28,000/-.

8. Learned Counsel appearing for the respondent-Insurance

¹ 2013 ACJ 2544

Company submits that the deceased was an inmate of a vehicle and he was not driving the vehicle at that point of time. He submits that the judgment of the apex Court relied on by the appellants/claimants is not applicable to the facts of this case where the deceased in this case is an auto driver and he was a bachelor. He submits that even according to the appellants/claimants, the income of the deceased was Rs.5000/- in that case, the argument of the learned counsel for the appellants/claimants to consider the income of the deceased as Rs.6000/- cannot be accepted. He submits that the court below taking into consideration all the relevant facts as granted the compensation which is just and reasonable.

9. The admitted facts in this case are that the deceased was an auto driver and it is the case of the appellants/claimants that the income of the deceased is Rs.5000/- and in the judgment relied on by the appellants/claimants i.e. *Minu Rout and another's* (supra), the Hon'ble apex court has held that the salary of the deceased Driver should be taken as Rs.6000/- by taking judicial notice of the fact that post of the driver is a skilled job. Though the claim of the appellants/claimants is Rs.5000/- as monthly salary of the deceased, for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at Rs.6000/- per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal as well as the High Court. The income of the deceased is taken as Rs.6000/- per month and 40% future prospects would come to Rs.2400/-

and the total income of the deceased would come to Rs.8400/- and the multiplier that applies to the age of the deceased is 18 and he is a bachelor and if half of it is deducted i.e. $8400 \times 12 \times 1/2 \times 18$ would come to Rs.9,07,200/-, for consortium, Rs.44,000 each is granted, for funeral and loss of estate, Rs.33,000/- is granted and the total amount that the appellants/claimants are entitled is Rs.10,28,200/-

10. In view of the above discussion, the appellant is entitled for the compensation under the following heads:-

1)	Loss of dependency 6000 income +future prospects 40 % i.e.2400/- X multiplier18 and deduction bachelor i.e.12X1/2 (6000+2400X18X12X1/2)	=	Rs. 9,07,200/-
2)	Consortium (44000X2)	=	Rs. 88,000/-
3)	Funeral + Loss of estate	=	Rs. 33,000/-
	Total	=	<u>Rs.10,28,200/-</u>

11. Learned Counsel for the appellants/claimants submit that appellants/claimants No.2 died during the pendency of the appeal as such, appellants/claimants No.1 is entitled for the entire compensation.

12. In the result, the Motor Accident Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.3,35,000/- to Rs.10,28,200/-.

- (a) The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization.
- (b) Appellant/claimant No.1 shall pay the court fee on the enhanced amount.
- (c) The respondent shall deposit the amount into Court within (8) weeks from the date of receipt of copy of the judgment. On such deposit, the appellant/claimant No.1 is permitted to withdraw entire amount without furnishing the security.

Miscellaneous applications, pending if any, shall stand closed.

31st January, 2023
myk

LALITHA KANNEGANTI, J