

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.Nos.1281 of 2010 and 1230 of 2015

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.1281 of 2010 filed by the United India Insurance Company Limited challenging the quantum of compensation and M.A.C.M.A.No.1230 of 2015 filed by the claimants seeking enhancement of compensation, are directed against the very same award and decree, dated 30.04.2009 made in O.P.No.22 of 2006 on the file of the XVIII Additional Chief Judge-cum-IV Additional Metropolitan Sessions Judge, Hyderabad (for short “the Tribunal”).

2. For the sake of convenience, hereinafter the parties will be referred to as per their array before the Tribunal.
3. The facts, in issue, are as under:

Originally the claimants filed a petition under Sections 166 read with Sections 163-A, 140(C) of the Motor Vehicles Act, 1988 against the respondents 1 and 2, claiming compensation of Rs.12,00,000/- for the death of one Phaneender Kumar Reddy (hereinafter referred to as “the deceased”), who died in the accident that occurred on 07.07.1999.

According to the claimants, on 07.07.1999 while the deceased along with five other students were proceeding to Badrachalam in a Maruti Car and when they reached near Venkatreddypet bus stop at about 4-30 p.m., a lorry bearing No.AP.15.U.979 came from the opposite direction in a rash and negligent manner with high speed and hit their car, due to which, four students died on the spot and other two succumbed to injuries later on. According to the petitioners, the deceased was a second year B.Tech (Computer) student at Dr.Paul Raj Engineering College, Badrachalam of Khammam District and the only son to their parents and he was aged 21 years. Therefore, they are seeking compensation of Rs.12,00,000/- against the respondent Nos.1 and 2, who are the owner and insurer of the lorry, jointly and severally.

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

5. Respondent No.2 filed counter disputing the manner of accident, age and avocation of the deceased. It is further contended that the compensation claimed is excessive and therefore, prays to dismiss the petition.

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

1. *Whether the deceased died in the accident that took place due to rash and negligent driving by the driver of lorry bearing No. AP.15.U.979?*
2. *Whether the petitioners are entitled for compensation, if so, to what amount and from whom?*
3. *To what relief?*

7. In order to prove the issues, PWs.1 to 3 were examined and Exs.A1 to A9 were marked on behalf of the petitioners. On behalf of the respondents, no witnesses were examined, however, Ex.B1 was marked.

8. After considering the oral and documentary evidence available on record, the Tribunal held that the accident took place due to contributory negligence of the lorry and car drivers equally and awarded the total compensation of Rs.5,30,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization against the respondents 1 and 2.

6. Heard both the learned counsel and perused the material available on record.

7. The main contention raised by the learned Standing Counsel for the appellant-United India Insurance Company Limited is that the sole negligence is on the part of the car in which the deceased was proceeding and that the tribunal ought to have fixed the notional income of the deceased as per second schedule at Rs.15,000/- per annum and ought to have fixed his contribution to the family at 50% and prays to set aside the Order passed by the Tribunal.

8. Learned Counsel for the claimants has submitted that the accident occurred due to rash and negligent driving of the driver of lorry and the tribunal ought to have granted the entire compensation. It is further submitted that though the claimants established that the deceased was a B.Tech student, the Tribunal has awarded very meager amount.

9. With regard to the manner of accident, PW-1 has reiterated the petition averments. PW-3 who witnessed the accident deposed that while he was at Venkatreddypet bus stop, this accident took place and he witnessed the same. Further the police after thorough investigation filed charge sheet against the driver of lorry. Without considering Ex.A6 charge sheet and discarding the evidence of PW-3

who is the eyewitness, the tribunal came to erroneous conclusion by holding that there is contributory negligence on both the vehicles for causing the accident. Therefore, this court is of the considered opinion that the accident occurred only due to the sole negligence on the part of the driver of the lorry.

10. With regard to the quantum of compensation, the evidence of PW-1 shows that the deceased was a second year B.Tech student. Therefore, considering the avocation of the deceased as a B.Tech student, the tribunal rightly taken the notional of the deceased at Rs.10,000/-. However, the tribunal did not consider the future prospects. 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 also entitled to the future prospects and since the deceased was aged about 21 years at the time of accident, 40% of the income is added towards future prospects. Therefore, future monthly income of the deceased comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/- being 40% thereof). From this, 50% is to be deducted towards personal expenses of the deceased following *Sarla Verma v.*

¹ 2017 ACJ 2700

Delhi Transport Corporation² as the deceased was a bachelor. After deducting 50% amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.7,000/- per month. Since the age deceased was 21 years by the time of the accident, the appropriate multiplier is '18' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation*** (supra). Adopting multiplier '18', the total loss of dependency would be Rs.7,000/- x 12 x 18 = **Rs.15,12,000/-**. In addition thereto, the claimants are also entitled to **Rs.33,000/-** under the conventional heads as per **Pranay Sethi's** (supra). Further the petitioner Nos.1 and 2 are also entitled to parental consortium at **Rs.40,000/-** each as per the **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram**³. Thus, in all the claimants are entitled to **Rs.16,25,000/-**.

12. With regard to the liability, since the accident occurred due to the rash and negligent driving of the driver of the lorry and Ex.B1 policy was in force as on the date of accident, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

² 2009 ACJ 1298 (SC)

³ 2018 Law Suit (SC) 904

13. Accordingly, while dismissing the M.A.C.M.A.No.1281 of 2010, M.A.C.M.A.No.1230 of 2015 filed by the claimants is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.5,30,000/- to **Rs.16,25,000/-**. The enhanced amount shall carry interest at 7.5% per annum from the date of petition till the date of realization, payable by respondent Nos.1 and 2 jointly and severally. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the compensation is one month from the date of receipt of a copy of this order. The claimants shall pay the deficit court fee and on such payment of court fee only, the claimants are entitled to withdraw the compensation without furnishing any security. The petitioners have to forego the interest for the period of delay. There shall be no order as to costs.

13. Miscellaneous petitions, if any, pending shall stand closed.

M.G.PRIYADARSINI,J

06.01.2023

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