

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

**M.A.C.M.A. No.201 of 2017**

**JUDGMENT:**

Not being satisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Courts, Hyderabad in M.V.O.P. No.255 of 2012 dated 31.08.2016, the present appeal is filed by the claimants.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. According to the petitioners, on 17.09.2011 the deceased Banoth Devula was going to his residence situated at G.G.Colony, Road No.8, Habsiguda by walk and when he reached near Habsiguda cross roads, one lorry bearing No. AP 28 TA 2133 being driven by its driver came in a rash and negligent manner at high speed and dashed him, due to which, he fell down on the road and the lorry ran over him and he died on the spot. According to the claimants, the deceased was a labourer and used to earn more than Rs.3,000/- per month. Thus, the petitioners are claiming compensation of Rs.5,00,000/- under various heads.

4. Respondent No.1 remained ex parte; Respondent No.2 filed counter disputing the manner in which the accident occurred, age, avocation and income of the deceased. It is further contended that the claim is excessive.

5. In view of the above pleadings, the Tribunal raised the following issues:

- 1) Whether Banoth Devula died in a motor accident due to rash and negligent driving of driver of lorry bearing No. AP 28 TA 2133?
- 2) Whether the petitioners are entitled to compensation, if so, how much and from whom?
- 3) To what relief?

6. In order to prove the issues, on behalf of the petitioners, petitioner No.1 was examined as PW.1 and got marked Exs.A-1 to A-5. On behalf of respondent No.2, RWs.1 and 2 were examined and Exs.B1 to B3 and Exs.X1 and X2 were marked.

7. On considering the oral and documentary evidence on record, the Tribunal has awarded an amount of Rs.4,61,300/- towards compensation to the appellants-claimants against the respondent Nos.1 and 2 jointly and severally, along with proportionate costs and interest

@ 8% per annum from the date of petition till the date of decree and thereafter at 6% per annum from the date of decree till payment, as against the claim of Rs.5 lakhs.

8. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the second respondent-Insurance Company. Perused the material available on record.

9. The learned counsel for the appellants-claimants has submitted that although the claimants established the fact that the death of the deceased-Banoth Devula was caused in a motor accident, the Tribunal awarded meager amount.

10. The learned Standing Counsel appearing on behalf of respondent No.2-Insurance Company sought to sustain the impugned award of the Tribunal contending that the Tribunal after considering all aspects has awarded reasonable compensation and the same needs no interference by this Court.

11. With regard to the manner of accident, there is no dispute. However, the Tribunal after evaluating the evidence of PW.1 coupled with documentary evidence on record has rightly held that the accident

took place due to the rash and negligent driving of the offending lorry by its driver.

12. Here, it is pertinent to state that petitioners are the wife and son of the deceased respectively. The tribunal refused to grant compensation to the petitioner No.2 alleging that he is a major and there is no evidence to show that petitioner No.2 is incompetent to do any work and depending on the earnings of his father. In this regard, it is pertinent to state that the Apex Court in **Manjuri Bera vs. Oriental Insurance Company Limited in Appeal (Civil) No.1702 of 2007 dated 30.03.2007**, held that a married daughter/son is also entitled to compensation being the legal representative and no dependency cannot be a ground to deny her/his compensation. Therefore, as per the above decision, a married daughter/son of the deceased though not dependant on the deceased is also entitled to get compensation, as she/he falls under the category of legal representative under Section 166 of the Motor Vehicles Act.

13. Coming to the quantum of compensation, according to PW-1, the deceased was a labourer and getting Rs.6,000/- per month and contributing the same to his family. However, since the petitioners did

not produce any oral documentary evidence to prove the income of the deceased, the Tribunal had taken the income of the deceased as Rs.4,000/- per month, which is very less. Hence, considering the age and avocation of the deceased, this Court is inclined to take the income of the deceased at Rs.5,000/- per month. Further in light of the principles laid down by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others*<sup>1</sup>, the claimant is entitled to future prospects @ 10% of his income, since the deceased was aged 56 years as per Exs.A1 to A3. Then it comes to Rs.5,500/- (5,000 + 500 = 5,500/-). From this, 1/3rd is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation*<sup>2</sup> as the petitioners are two in number. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.3,667/- per month (5500 – 1833 = 3667/-). Since the deceased was 56 years by the time of the accident, the appropriate multiplier is ‘9’ as per the decision reported in *Sarla Verma v. Delhi Transport Corporation* (supra). Adopting multiplier ‘9’, the total loss of dependency would be Rs.3,667/- x 12 x 9 = **Rs.3,96,036/-**. In addition thereto, the claimants

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<sup>1</sup> 2017 ACJ 2700

<sup>2</sup> 2009 ACJ 1298 (SC)

are also entitled to **Rs.77,000/-** under the conventional heads as per **Pranay Sethi's** (supra). Thus, in all the claimants are entitled to **Rs.4,73,036/-**.

14. With regard to the liability, considering the evidence of RWs.1 and 2, the tribunal rightly held that since the offending vehicle was having valid insurance policy and was having valid permit to ply on the road by the date of accident, respondent Nos.1 and 2 are jointly and severally liable to pay compensation.

15. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.4,61,300/- to **Rs.4,73,036/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization, to be payable by the respondent Nos.1 and 2 jointly and severally. Out of the said compensation, petitioner No.2 is entitled for Rs.1,00,000/- and the remaining amount is apportioned to the share of petitioner No.1. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. The claimants shall pay the Court fee, if they are not paid. On such payment of court fee only, the

claimants are entitled to withdraw the amount. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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**SMT.M.G.PRIYADARSINI,J**

04.01.2023  
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