

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.997 of 2017

JUDGMENT:

Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Court, Hyderabad, in M.V.O.P.No.1323 of 2012 dated 10.01.2017, the claimants have filed the present appeal.

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

3. According to the petitioners, on 29-02-2012 the deceased-B.Malla Reddy started from Ghatkesar in order to go to Uppal on his scooter and at about 10-40 a.m. when he reached in front of Bawarchi Restaurant, Uppal, one bus bearing No. AP.36.Y.0309 being driven by its driver came in rash and negligent manner at high speed from back side and dashed the scooter, due to which, the deceased sustained grievous head injury and died on the spot. According to the petitioners, the deceased was aged 46 years, and earning Rs.2,00,000/- per annum on his business. Thus, the petitioners claimed compensation of

Rs.25,00,000/- under various heads against the respondents 1 to 4, who are owner, insurer and hirers respectively.

4. Respondent No.1 filed counter disputing the manner of accident and further contended that the bus was insured with respondent No.2 Insurance Company and the policy was in force as on the date of accident. Therefore, prayed to dismiss the petition.

5. Respondent No.2 filed counter disputing the manner in which the accident occurred and the age, avocation and income of the deceased. It is further contended that the claim is excessive.

6. Respondent Nos.3 and 4 have filed common counter denying the averments of the petition and further contended that the Andhra Pradesh State Road Transport Corporation is not liable to pay the compensation and the insurance company alone is liable to pay the compensation, as the offending bus was hired by them. Therefore, prays to dismiss the petition.

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

- 1) Whether the accident occurred on 29.02.2012 due to rash and negligent driving of the driver of the bus

bearing No. AP.36.Y.0309 causing the death of B.Malla Reddy?

2) Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?

3) To what relief?

8. In order to prove the issues, on behalf of the petitioners, PWs.1 to 3 were examined and got marked Exs.A-1 to A-9. On behalf of respondents, no witnesses were examined, however, Ex.B1 and Ex.X1 were marked.

9. After considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.21,70,700/- towards compensation to the appellants-claimants against the respondent Nos.1 and 2 herein who are owner and insurer of the offending vehicle, jointly and severally, along with proportionate costs and interest @ 8% per annum from the date of petition till the date of decree and thereafter @ 6% per annum till realization.

10. Heard both sides. Perused the material available on record.

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

12. 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 appreciating the evidence on record, has rightly awarded adequate compensation and the same needs no interference by this Court.

13. With regard to the manner of accident, after evaluating the evidence of PWs.1 and 2 coupled with the documentary evidence available on record, the tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of RTC bus which resulted the death of the deceased B.Malla Reddy.

14. With regard to the quantum of compensation, according to the petitioners, the deceased was aged 46 years, and earning Rs.2,00,000/- per annum on his business under the name and style of M/s. Sai Kiran Welding Works. To prove the earnings of the deceased, the petitioners have filed Exs.A6 to A9 Income tax returns for the years from 2007-08

to 2010-11. PW-3 the then Inspector of Income Tax Office, Kondapur road, Hyderabad deposed that the gross income of the assessee/deceased was shown for the assessment year 2007-08 as Rs.1,28,650/-, Rs.1,59,100/- for the assessment year 2008-09, Rs.1,67,820/- for the assessment year 2009-10 and Rs.1,73,526/- for the assessment year 2010-11. In the cross-examination PW-3 stated that the agricultural income of the deceased was shown as Rs.35,000/- per annum in all the said income tax returns. Therefore, considering the evidence of PW-3 coupled with Exs.A6 to A9 income tax returns, the average income of the deceased comes to Rs.1,92,274/- per annum and the same can be taken into consideration for calculating the loss of earnings. Further, 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 entitled to future prospects @ 25% of his income, since the deceased was aged 50 years. Then it comes to Rs.2,40,342/- (1,92,274 + 48,068 = 2,40,342/-). From this, 1/4th of the actual income is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation*² as the dependants are four in number. After deducting 1/4th of the

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.1,80,257/- per month (2,40,342 – 60,085 = 1,80,257/-). Since the deceased was 50 years by the time of the accident, the appropriate multiplier is '13' as per the decision reported in *Sarla Verma v. Delhi Transport Corporation* (supra). Adopting multiplier '13', the total loss of dependency would be Rs.1,80,257/- x 12 x 13 = **Rs.23,43,341/-**. In addition thereto, the claimants 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.24,20,341/-**.

15. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the driver of the offending bus. Further Ex.B1 shows that the policy was in force as on the date of accident. Therefore, considering Ex.B1 the tribunal rightly held that the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners and the petition is dismissed against the respondent Nos.3 and 4-Corporation, which is a hirer of the said RTC bus.

16. In the result, the M.A.C.M.A. is partly allowed by granting compensation amount of **Rs.24,20,341/-** to the petitioners with costs and interest at 6% 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. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the amount. The amount of compensation shall be apportioned among the appellants-claimants in the ratio as ordered by the Tribunal. The petition against respondent Nos.3 and 4 shall stand dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

25.01.2023

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