

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.1983 of 2018

JUDGMENT:

Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Asifabad in O.P.No.75 of 2017 dated 29.01.2018, 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, who are wife, son and parents of the deceased-V.Srishailam Bharadhwaj, on 29.10.2016 at about 8-00 p.m., the deceased was proceeding on Pulsar motorcycle along with Janagama Srinivas towards Tandoor, and when they reached near Yapalguda Bus stage on State Highway No.1, one Eicher van bearing No. AP 01 W 6963 being driven by its driver came in a rash and negligent manner with high speed and dashed the motorcycle from opposite direction, due to which, the deceased and Janagama Srinivas fell on the road and sustained injuries and died on the spot. According to the petitioners, the deceased was aged 24 years, working as

Supervisor in Sunrise Enterprises and doing cultivation and earning Rs.15,000/- per month as salary and Rs.2,00,000/- per annum by doing cultivation. Thus, the petitioners are claiming compensation of Rs.16,00,000/- under various heads.

4. Respondent Nos.1 and 2 remained ex parte; Respondent No.3 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 driver of the offending vehicle was not having valid driving license at the time of accident and that the claim is highly excessive.

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

- 1) Whether Voggari Srishailam Bharadhwaj died in the accident that occurred on 29-10-2016 at 8-00 p.m., on State Highway No.1, near Yapalguda Bus stage of Khairgaon village of Mandal Rebbena, within the limits of P.S. Rebbena?
- 2) Whether the said accident occurred due to rash and negligent driving of Eicher Van bearing No. AP 01 W 6963?
- 3) Whether petitioners are entitled to claim compensation for the accidental death of Voggari

Srishailam Bhardhwaj, if so, how much, and
against which of the respondents?

4) To what relief?

6. 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-15. On behalf of respondent No.3, no oral or documentary evidence was produced.

7. After considering the oral and documentary evidence available on record, the Tribunal awarded the total compensation of Rs.7,76,000/- with costs and interest at 9% per annum from the date of the petition till realization against the respondent Nos.1 to 3 jointly and severally.

8. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the respondent No.3-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-V.Srishailam Bharadhwaj was caused in a motor accident, the Tribunal ought to have taken the income of the deceased at Rs.15,000/-

per month and did not consider the future prospects and awarded meager amount.

10. The learned Standing Counsel appearing on behalf of respondent No.3-Insurance Company sought to sustain the impugned award of the Tribunal contending that the Tribunal after appreciating the evidence on record, has awarded adequate compensation and the same needs no interference by this Court.

11. With regard to the manner of accident, admittedly, there is no dispute. However, considering the evidence of PW-2 coupled with the documentary evidence on record, the tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of the offending Eicher Van.

12. With regard to the quantum of compensation, according to the petitioners, the deceased was aged 24 years, working as Supervisor in Sunrise Enterprises apart from doing cultivation and earning Rs.15,000/- per month as salary and Rs.2,00,000/- per annum by doing cultivation. To prove the earnings of the deceased, PW-3 was examined who stated that Ex.A7 salary certificate was issued by him showing that the deceased was drawing Rs.15,000/- per month. Ex.A15

Salary Register produced by PW-3. As there is no authenticated evidence to show that PW-3 paid salary to the deceased at Rs.15,000/- per month, the tribunal has taken the income of the deceased at Rs.4,000/- per month, which is very less. Therefore, considering the evidence of PW-3 and also considering the avocation of the deceased as a private employee, the income of the deceased can be taken at Rs.8,000/- per month. Further the tribunal did not consider the future prospects. Therefore, 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 @ 40% of his income, since the deceased was aged 25 years. Then it comes to Rs.11,200/- (8,000+ 3,200 = 11,200/-). From this, 1/4th of the income is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation*² since the deceased left as many as four persons as the dependants. After deducting 1/4th of the amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.8,400/- (11,200 – 2,800 = 8,400/-) per month. Since the deceased was 25 years by the time of the accident, the appropriate multiplier is '18' as per the decision

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

reported in *Sarla Verma v. Delhi Transport Corporation* (supra). Adopting multiplier '18', the total loss of dependency would be Rs.8,400/- x 12 x 18 = **Rs.18,14,400/-**. In addition thereto, the claimants are also entitled to **Rs.77,000/-** under the conventional heads as per **Pranay Sethi's** (supra). Petitioner No.2 who is minor son of the deceased is entitled for parental consortium at **Rs.40,000/-** as per the **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram**³. Thus, in all the claimants are entitled to **Rs.19,31,400/-**.

13. In the result, the M.A.C.M.A. is allowed by granting compensation amount of **Rs.19,31,400/-** to the petitioners with costs and interest at 7.5% p.a. from the date of petition till the date of realization, to be payable by the respondent Nos.1 to 3 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. The claimants shall pay deficit Court fee. On such payment of court fee only, the claimants are entitled to withdraw the amount. The amount of compensation shall be

³ 2018 Law Suit (SC) 904

apportioned among the appellants-claimants in the ratio as ordered by the Tribunal. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

02.02.2023

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