

HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. NO. 4198 of 2014 and 1377 of 2015

Common Judgment:

By order dated 27.05.2014, the learned Chairman, Motor Accidents Claims Tribunal-Cum-IV Addl. District and Sessions Judge at Ranga Reddy District (for short, the Tribunal) partly allowed O.P. No. 173 of 2011 awarding total compensation of Rs. 1,64,500/- in favour of the claimant towards compensation. Seeking enhancement of compensation, the claimant preferred M.A.C.M.A. No. 4198 of 2014 and challenging the quantum of compensation as excessive and also contending contributory negligence, respondents 1 and 2-the Andhra Pradesh State Road Transport Corporation, preferred MACMA No. 1377 of 2015.

2. For the sake of convenience, hereinafter, the parties are referred to as per their array before the Tribunal.

3. The facts of the case are as follows:

The claimant has filed the claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.4,00,000/- for the death of the deceased M. Suresh Babu alias Chanti , who died in a motor vehicle accident that occurred on 26.01.2011 at about 07:30 hours. It is

stated by the petitioner that on the fateful day, the deceased was proceeding as a labour in an auto trolley vehicle bearing No. AP 28 Y 5644 and driver of the auto drove it in a rash and negligent manner proceeding from Balanagar cross roads towards Fathenagar bridge and when they reached Fathenagar, one APSRTC bus bearing No. AP 10 Z 2545 which was driven by its driver in a rash and negligent manner and dashed the auto trolley due to which the deceased sustained fatal injuries and succumbed to the injuries on the same day while undergoing treatment at Gandhi Hospital at Hyderabad. Based on the complaint, police, Sanath Nagar registered a case in crime No. 44 of 2011 under Sections 337 and 304 IPC stating that the accident occurred due to rash and negligent driving of the driver and filed charge sheet against him.

It was further contended by the claimant that the deceased was hale and healthy and was aged 24 years at the time of accident and used to earn Rs.9000/- per month by working as labour and as the accident occurred due to the rash and negligence of the bus driver, the claimant have claimed compensation of Rs.4,00,000/- from the respondents/ APSRTC.

4. Before the tribunal respondents filed counter denying the averments of the claim petition and the manner in which the accident

occurred, including the age, avocation and income of the deceased. It is further contended that there is no negligence on part of the bus driver and the accident occurred only due to the negligence of driver of the auto trolley. Therefore, prayed to dismiss the petition.

5. Considering the oral and documentary evidence on record, the Tribunal taking the monthly income Rs.3,000/- per month by deducting 50% of the income towards the personal expenditure of the deceased and by applying multiplier of 17 as the age of the deceased was 26 years and thereby calculated the amount on all heads which came to Rs.3,29,000/-. However, deducted half the amount by fixing liability for contributory negligence on driver of the auto trolley and granted an amount of Rs.1,64,500/-.

6. Heard the learned counsel for the claimant and the learned standing counsel for the respondents-Andhra Pradesh State Road Transport Corporation. Perused the material available on record.

7. As per the case of the claimant, the deceased was working as a labour and earning Rs. 9,000/- per month. As no income proof is filed to prove the income of the deceased, the Tribunal has taken his income as Rs.3,000/- per month. This court is of the opinion that as the date of accident is of the year 2011, the income of the deceased can be taken @

R.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***¹, the claimant are also entitled to the future prospects and since the deceased was aged about 26 years at the time of accident, 40% of the income is added towards future prospects. Then it comes to Rs.7,000/- (5,000 + 2,000 = 7,000/-). Since the deceased is a bachelor, 50% of his income is to be deducted towards his personal and living expenses. Then the contribution of the deceased would be Rs.3,500/- per month. Since the deceased was aged about 26 years at the time of accident, the appropriate multiplier in light of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***² would be “17”. Then the loss of dependency would be Rs.3,500/- x 12 x 17 = **Rs.7,14,000/-**. In addition thereto, under the conventional heads, the claimant is granted **Rs.33,000/-** as per the decision of the Apex Court in ***Pranay Sethi*** (supra). Further the petitioner is entitled for **Rs.40,000/-** as parental consortium as per ***Magma General Insurance Company Limited v Nanu Ram alias Chuhru Ram***³. Thus, in all, the compensation is enhanced to **Rs.7,87,000/-** awarded by the Tribunal.

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

³ (2018) 18 SCC 130

8. Now, coming to the contention of the learned counsel for the APSRTC that though the accident occurred due the negligence of the auto trolley as such APSRTC is not responsible for the accident and driver, owner and insurer of the auto trolley are necessary parties and the claim petition ought to have been dismissed. This court has perused the evidence on record and of the opinion that police after thorough investigation laid charge sheet on the driver of the APSRTC bus but, the Tribunal has fastened the liability against the driver of the auto trolley and the RTC bus driver by considering contributory negligence pleaded by the APSRTC. This court is of the considered opinion that the Tribunal has erred in fixing liability against the driver of the auto trolley despite charge sheet was filed against the RTC bus driver after thorough investigation. Furthermore, the respondent have not adduced any rebuttal evidence either oral or documentary evidence to prove that there is negligence on part of the driver of the auto trolley. Even P.W. 2 who is the eyewitness to the accident, has clearly deposed that RTC bus itself dashed the auto trolley, therefore, the question of showing the driver , owner and insurer of auto trolley is not necessary. Under these circumstances this court finds no force in the contention of the learned standing counsel for the APSRTC. Therefore, the appeal is devoid of merits and liable to dismissed.

9. In the result, M.A.C.M.A. No 4198 of 2014 filed by the claimant stands allowed enhancing the quantum of compensation awarded by the tribunal from Rs.1,64,500/- to **Rs.7,87,000/-** to be paid by the respondents jointly and severally. The enhanced amount shall carry interest at 6% per annum from the date of petition till the date of realization. The respondent is directed to deposit the compensation amount within a period of one month from the date of receipt of a copy of this order. On such deposit of compensation amount by the respondents-Corporation, the claimant is at liberty to withdraw the same without furnishing any security. Consequently M.A.C.M.A. No. 1377 of 2015 stands dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

11-01-2023,

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