

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

M.A.C.M.A.No.2018 of 2014

JUDGMENT:

Challenging the order and decree, dated 09.12.2011 passed in M.V.O.P.No.64 of 2006 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Adilabad (for short "the Tribunal"), in dismissing the claim-petition, the present appeal is filed by the claimant.

2. For the sake of convenience, the parties will be hereinafter referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the claimant filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,00,000/- for the death of her son, one Bandari Ramesh (hereinafter referred to as "the deceased"), who died in a vehicle accident that occurred on 05.10.2003. It is stated that on the fateful day, at about 18.00 hours, while the deceased, along with others, was proceeding in an auto bearing No.AP 1U 5627 from Srirampur to Godavarikhani, when the auto reached near Godavari bridge, the offending vehicle i.e., jeep bearing No. AP 15V 1168, owned by respondent No. 1 and insured with respondent No. 2, being driven by its driver in a rash and negligent manner at high speed, dashed the auto. As a result, the deceased sustained severe injuries and while undergoing treatment

at Government Hospital, he succumbed to the injuries. According to the claimant, the deceased was 26 years and earning Rs.5,000/- as auto driver and therefore, they filed the O.P. claiming compensation of Rs.1.00 lakh against the respondents.

4. Before the tribunal, while the respondent No. 1 remained ex parte, respondent No. 2, insurance company, filed counter denying the manner in which the accident took place, including the age, avocation and income of the deceased. It was the specific case of the respondent No. 2 that the accident occurred due to the negligence of the driver of the auto, in which the deceased was traveling and that there was no negligence on the part of the driver of the Jeep. It is also stated that the quantum of compensation claimed is excessive, baseless and prayed to dismiss the petition.

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

1. *Whether the accident dated 05.10.2003 was due to the rash and negligent driving of the motor vehicle bearing No.AP 15V 1168 belonging to respondents?*
2. *Whether the petitioner is entitled to any compensation, if so, to what extent and against which of the respondents?*
3. *To what relief?*

6. In order to prove the issues, PWs.1 & 2 were examined and Exs.A1 to A5 got marked on behalf of the petitioner. On behalf of

respondent Nos.1 and 2, no witnesses were examined and no document was marked.

7. Considering the oral and documentary evidence available on record, the Tribunal has dismissed the petition on the ground that the petitioner failed to implead the wife of the deceased as claimant and therefore, in the absence of the impleadment of wife of the deceased the O.P. cannot be entertained. Challenging the same, the present appeal has been filed by the claimant.

8. Heard both sides and perused the record.

9. The learned counsel for the claimant contended that Tribunal ought to have seen the wife of the deceased as only a proper party but not a necessary party to the claim petition and also stated that the Tribunal could have impleaded the wife of the deceased as respondent as per Order I, Rule 10 of CPC, in view of its conclusion that it can *Suo-motto* implead the wife of deceased as respondent.

10. On the other hand, the learned Standing Counsel for the respondent No.2, Insurance Company, has contended that the Tribunal has rightly dismissed the appeal as the petitioner did not make any effort to implead the wife of the deceased as party, which needs no interference by this Court.

11. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged by either of the respondents.

12. Coming to the quantum of compensation, it is contended that the tribunal has not relied on Exs.A2 & A5 which discloses details of the wife of the deceased, but however dismissed the O.P. for non-impleading the wife. Merely because the wife is not included to the O.P., it cannot be a sole ground to reject the claim. The tribunal should have taken clue from Exs.A.2, Inquest report & A.5, Charge Sheet or could have proceeded to decide the quantum of compensation and after apportioning the same, should have taken steps to keep the share of compensation amount that determined to the wife to be kept in a national bank for a certain period. Therefore, this Court is inclined to decide the quantum of compensation and allot the share of claimant by keeping aside the share of wife in a national bank for a reasonable period.

The claimant in order to prove the income of deceased as auto driver, has not produced any documentary evidence. However, considering the avocation of the deceased as auto driver, age and the accident is of the year 2003, this Court is inclined to fix the income of the deceased as Rs.4,500/- per month. As he was 26 years at the time of accident, 40% towards future prospects

to the established income of the deceased is to be added as per the decision of the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others**¹. By adding 40% towards future prospects, the future monthly income of the deceased comes to Rs.6,300/- (Rs.4500 + 1800). After deducting 1/3rd towards personal expenses, the net income of the deceased comes to Rs.4,200/-. As per the records, the deceased was aged about 26 years at the time of accident. Therefore, the appropriate multiplier in light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**² is “17”. Thus, the future loss of income comes to **Rs.8,56,000/-** (Rs.4,200/- x 12 x 17). That apart, under the conventional heads, the claimant is entitled to Rs.77,000/- as per **Pranay Sethi** (Supra). Thus, in all, the claimant along with the wife of the deceased is entitled to Rs.9,33,800/- .

13. Accordingly, M.A.C.M.A. is allowed granting compensation of Rs.9,33,800/- with interest at 7.5% per annum from the date of filing of the petition till the date of its realization to be paid by the respondent Nos. 1 & 2 jointly and severally. Out of the said amount, the claimant being the mother of the deceased is entitled to 40% and the wife is entitled to 60%. The 40% of compensation

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

being the share of the claimant, shall be paid within a period of two months from the date of receipt of a copy of this order. The remaining 60% of share that fell to the wife of the deceased shall be kept in a fixed deposit in any nationalized bank for a period of five years. In the meanwhile, if the wife comes forward with appropriate application along with necessary proofs, the tribunal is directed to order for release of the said amount in her favour. In case, no such application is filed even after lapse of five years, the said amount, along with accrued interest, shall be released in favour of the claimant. However, the claimant shall pay the deficit court fee on the enhanced compensation. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

03.03.2023
Gms/Tsr

SMT. M.G.PRIYADARSINI, J

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