

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

M.A.C.M.A. No. 287 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 17.05.2014 made in O.P.No.364 of 2013 on the file of II Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

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

3. Brief facts of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.9,00,000/- for the death of one M.Suresh (hereinafter referred to as "the deceased") in a motor vehicle accident that occurred on 06.10.2012. According to the claimants, on the fateful day, the deceased started from Chilakalaguda Cross Roads in order to go to Boiguda on a motorcycle and when he reached

near Petrol Pump, Boiguda, Secunderabad, another motorcycle bearing No.AP 10 AR 2932, 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 deceased, as a result the deceased fell down, sustained fracture injuries on vital parts of the body and immediately, he was shifted to Gandhi Hospital, Secunderabad, where he succumbed to injuries while undergoing treatment. On a complaint, the Chilakalaguda Police has registered a case in Crime No.553 of 2012 against the rider of the motorcycle bearing No.AP 10-AR-2932 for the offence punishable under Section 304-A of I.P.C. It is stated that prior to the accident, the deceased was aged about 28 years, hale and healthy and was earning Rs.9,000/- per month by working as car driver. Due to sudden demise of the deceased, the claimants lost their source of income, love and affection and therefore, they filed the claim-petition seeking compensation of Rs.9.00 lakhs under various heads.

4. Before the Tribunal, while the respondent No. 1, owner of the offending vehicle, stood ex parte, the respondent No. 2 contested the claim denying the averments of the claim petition, including the age, avocation and income of the deceased and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the claim, counter filed by respondent No.2 and the evidence, both oral and documentary brought on record, the tribunal has allowed the O.P. in part awarding a sum of Rs.5,93,000/- towards compensation with interest at 7% thereon to be paid by the respondent Nos.1 and 2 jointly and severally to claimant No.1 while dismissing the petition against claimant Nos.2 and 3 on the ground that they are not dependents on the deceased. Challenging the quantum of compensation awarded by the tribunal as meagre, the present appeal is filed by the claimants.

6. Heard both sides and perused the record.

7. Learned Counsel for the claimants mainly submits that the Tribunal ought to have taken the age of the deceased but not the age of his mother for assessing the loss of dependency in view of the settled principles of law laid down by the Apex Court. It is further submitted that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimants are also entitled to future prospects and also Rs.33,000/- under conventional heads. It is further contended that as per the law laid down by the Apex Court, the claimant No.1, being the mother of the deceased, is also entitled to Rs.40,000/- towards filial consortium.

8. Learned Standing Counsel for respondent No.2 sought to sustain the impugned award of the Tribunal contending that considering the age, avocation of the

¹ 2017 ACJ 2700

deceased, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court.

9. 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 the respondents.

10. As regards the quantum of compensation, though the claimants have claimed that the deceased was a car driver and was earning Rs.9,000/- per month. Since no documentary evidence has been produced by the claimants, the Tribunal has fixed the income of the deceased at Rs.6,000/- per month. Considering the prevailing rate of minimum wages at the relevant point of time, this Court is of the view that the said fixation of the income at Rs.6,000/- per month is just and reasonable. According to the oral evidence of P.W.1 coupled with Ex.A3, post mortem examination report, the deceased was aged about 28 years. Hence, the claimants are also entitled to

addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.8,400/- (Rs.6,000/- + Rs.2,400/-). Since the deceased was a bachelor, his personal living expenses shall be 50% of the said amount, i.e., Rs.4,200/- per month. In view of the decision of the Apex Court in **Munna Lal Jain v. Vipin Kumar Sharma and others**² when the deceased was a bachelor, the age of the deceased has to be considered while determining the multiplier and not the age of the mother. As stated above, the age of the deceased was between 28 years, the appropriate multiplier is '17' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation and another**³. Duly adopting the multiplier '17', the loss of dependency comes to Rs.4,200/- x 12 x 17 = Rs.8,56,800/-. That apart, the claimant No. 1 is entitled to Rs. 33,000/- under the

² 2015 (6) SCC 347

³ (2009) 6 SCC 121

conventional heads as per the decision of the Apex Court in ***Pranay Sethi*** (supra). Further, considering the fact that the claimant No.1, who is the mother of the deceased, this Court is inclined to award a sum of Rs.40,000/- under the head of filial consortium as per the decision of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***⁴. Since the claimant Nos.2 and 3, who are the elder married brothers of the deceased, they are not dependants on the deceased, the Tribunal has rightly dismissed the claim-petition against them. Thus, in all, the claimant No.1 alone is entitled to Rs.9,29,800/-.

11. Insofar as the interest is concerned, the claimant No.1 is entitled to interest @ 7.5% per annum on the compensation awarded by the Tribunal from the date of petition till realization, as per the decision of the Apex Court in ***Rajesh and others v. Rajbir Singh and others***⁵.

⁴ (2018) 18 SCC 130

⁵ 2013 ACJ 1403 = 2013 (4) ALT 35

12. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.9,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

13. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***⁶ and ***Nagappa Vs. Gurudayal Singh***⁷, the claimant No.1 is entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant No.1 is a paramount consideration the Courts should always endeavour to extend the benefit to the claimant No.1 to a just and reasonable extent.

⁶ (2011) 10 SCC 756

⁷ 2003 ACJ 12 (SC)

14. Accordingly, M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.5,93,000/- to Rs.9,29,800/-. The enhanced compensation amount will carry interest at 6% p.a. from the date of petition till the date of realization. Time to deposit the compensation is two months from the date of receipt of a copy of this judgment. On such deposit, the claimant No.1 is permitted to withdraw the entire amount without furnishing any security. However, the claimant No.1 is directed to pay Deficit Court Fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

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