

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.1573 of 2014

JUDGMENT:

Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.2379 of 2005 dated 08.08.2008, 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 03.09.2005 while the deceased-Ch.Mohan Rao was traveling in the Toyota Qualis bearing No. AP.28.V.4626 along with his colleagues and when it reached Ibrahimpatnam, its driver drove it in a rash and negligent manner with high speed and dashed against a stationed lorry resulting the death of deceased. According to the petitioners, the deceased was aged 39 years and earning Rs.8,211.30 ps. per month by working as Technician. Thus, the petitioners are claiming compensation of Rs.20,00,000/- under various heads.

4. Respondent Nos.1 and 3 remained ex parte; 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 accident occurred due to the negligence of the driver of lorry and there was no rash and negligent driving on the part of the driver of Toyota Qualis and that the claim is highly excessive.

5. Respondent No.4 filed counter disputing the manner in which the accident occurred and further contended that the accident occurred due to negligence of driver of Toyota Qualis and therefore, prays to dismiss the petition.

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

- 1) Whether Sri Ch.Mohan Rao died in the accident on 03-09-2005 due to rash and negligent driving of Toyota Qualis No.AP 28 V 4626?
- 2) Whether the petitioners are entitled for compensation, if so, against whom?
- 3) To what relief?

7. 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-18, besides Exs.X1

and X2. On behalf of respondents, no oral or documentary evidence was produced.

8. After considering the oral and documentary evidence available on record, the Tribunal awarded the total compensation of Rs.6,48,000/- with proportionate costs and interest at 7.5% per annum from the date of filing of the petition till the date of realization against the respondent Nos.1 and 2 jointly and severally and the petition against respondent Nos.3 and 4 is dismissed.

9. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the respondent No.2-Insurance Company. Perused the material available on record.

10. The learned counsel for the appellants-claimants has submitted that although the claimants established the fact that the death of the deceased-Ch.Mohan Rao was caused in a motor accident, the Tribunal awarded meager amount.

11. 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 awarded adequate compensation and the same needs no interference by this Court.

12. 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 Toyota Qualis.

13. With regard to the quantum of compensation, according to the petitioners, the deceased was aged 39 years and earning Rs.8,211.30 ps. per month by working as Technician. In support of their contention, Ex.A9 salary certificate is filed, which shows that the deceased was drawing salary of Rs.8,000/- and odd per month. However, the tribunal had taken the income of the deceased at Rs.6,000/- per month, which is very less. Therefore, considering the age and avocation of the deceased, the income of the deceased can be taken at Rs.8,000/- 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 claimants are entitled to future prospects @ 40% of his

¹ 2017 ACJ 2700

income, since the deceased was aged 39 years. Then it comes to Rs.11,200/- (8,000 + 3,200 = 11,200/-). 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, since the deceased left as many as five 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 39 years by the time of the accident, the appropriate multiplier is ‘15’ as per the decision reported in *Sarla Verma v. Delhi Transport Corporation* (supra). Adopting multiplier ‘15’, the total loss of dependency would be Rs.8,400/- x 12 x 15 = **Rs.15,12,000/-**. In addition thereto, the claimants are also entitled to **Rs.77,000/-** under the conventional heads as per *Pranay Sethi’s* (supra). Further the petitioner Nos.2 and 3 who are minor children are also entitled to filial consortium at **Rs.40,000/-** each as per the *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram*³. Thus, in all the claimants are entitled to **Rs.16,69,000/-**.

² 2009 ACJ 1298 (SC)

³ 2018 Law Suit (SC) 904

14. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.6,48,000/- to **Rs.16,69,000/-**. The enhanced amount shall carry interest at 7.5% per annum from the date of petition till the date of realization, payable by respondent Nos.1 and 2 jointly and severally. The enhanced amount shall be apportioned among the petitioners in the manner as ordered by the Tribunal. Time to deposit the compensation is one month from the date of receipt of a copy of this order. The appellants shall not be entitled to any interest from the date of the judgment under appeal till 24.02.2014. On such deposit, the claimants are entitled to withdraw the compensation without furnishing any security.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

04.01.2023

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