THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2646 OF 2017

JUDGMENT:

This appeal is filed by the petitioners against the order and decree dated 30.08.2014 in M.V.O.P.No.98 of 2011 passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Guntur, seeking enhancement of compensation.

2. The parties are being referred to as 'petitioners' and 'respondents' as arrayed in the petition before the Tribunal, for the sake of convenience and clarity.

3. **The case of the petitioners is thus**:

On 24.10.2010, while the deceased G.Venu Gopal Reddy along with his father returning to his house, after seeing his grandfather's fields at Mamillapalli Village, on his motor cycle bearing No.AP07-AT-8688 and when they reached outskirts of Venigalla village, a tipper bearing No.AP H 4630 came in a rash and negligent manner and dashed their motor cycle from its behind and as a result of which, deceased fell down and tipper ran over him. His father/ PW.2 fell down on the left side of the road and sustained injuries. Immediately after the accident, PW.2 shifted his son to Sai Bhaskar Hospital, Guntur and while undergoing treatment G.Venu Gopal Reddy succumbed to the injuries. As on the date of the accident, deceased hale and healthy, was aged about 27 years, working as Service engineer in Sri Sai Associates, L.G.Electronics, Hyderabad and was earning Rs.14,836/- per month and contributing the same for maintenance of his family. Due to the sudden demise, all the petitioners, who are dependants and legal representatives of deceased lost their financial support as well as love and affection. The accident occurred due to the rash and negligent driving of driver of tipper bearing No.APH 4630 and as such, a case in Crime No.214 of 2010 is

registered of the offence under Section 304-A of the Indian Penal Code (hereinafter referred to as 'the Code') against him. Respondent No.1 is owner and respondent No.2 is insurer of tipper bearing No.APH 4630. Both the respondents are jointly and severally liable to pay the compensation.

4. Respondent No.1/Owner of the offending vehicle filed counter refuting the averments made in the petition, wherein, *inter alia* contended that the accident occurred due to the rash and negligent riding of PW.2/father of deceased, petitioners claimed excessive compensation, and with other formal denials, prayed to dismiss the petition.

5. Respondent No.2 filed written statement refuting the averments made in the petition, wherein, *inter alia* contended that this respondent is not liable to pay compensation as the said tipper bearing No.APH 4630 was not involved in the said accident, the said vehicle is planted to claim compensation, petitioners colluded with respondent No.1 and police, claimed excessive compensation, and with other formal denials, prayed to dismiss the petition.

6. Taking into consideration of the aforementioned pleadings, the learned Tribunal settled the following issues:

> 1) Whether the accident occurred due to rash and negligent driving of the driver of Tipper lorry bearing No.AP H 4630, and that resulted in causing the death of deceased Gadikoya Venugopala Reddy, son of Srinivasa Reddy?
>
> 2) Whether the petitioners are entitled to compensation, and if so, to what amount and against whom?
>
> 3) To what relief?

7. During trial, petitioner Nos.1 & 4 examined themselves as PWs.1 and 2, and petitioners have got examined proprietor of Sri Sai Associates/ employer of the deceased as PW.3, and filed EXs.A1 to A10 and X1 to X3 documents. As against the said evidence, no oral and documentary evidence is adduced on behalf of the respondents. At the culmination of trial, learned Tribunal

awarded compensation of Rs.21,96,384/- for the untimely death of Sri G.Venugopal Reddy.

8. Being aggrieved by the said order and decree, the petitioners/claimants preferred the instant appeal, urging the principal grounds that:

(i) The order and decree of the learned Tribunal is contrary to law, weight of evidence and probabilities of the case.

(ii) The learned Tribunal grossly erred in awarding Rs.21,96,384/- as against the claim of Rs.32,00,000/-.

(iii) The learned Tribunal ought to have considered the salary of Rs.20,230/- for 30 days instead of considering salary of Rs.14,836/- for a period of 22 days.

(iv) The learned Tribunal erred in not considering the future prospects of the deceased at 50%.

(v) The learned Tribunal ought to have considered EX.A6/salary certificate and deduct 1/4th of the income towards personal expenses of the deceased.

(vi) The learned Tribunal erred in awarding rate of interest at 7.5% per annum.

(vii) The learned Tribunal ought to have awarded Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards care and guidance by following the decision of Hon’ble Supreme Court.

(viii) The learned Tribunal erred in awarding Rs.10,000/- towards funeral expenses.

(ix) The learned Tribunal failed to consider the future prospects of the deceased at 50%.

(x) The learned Tribunal erred in considering the established principles of law to award just and fair compensation and with other formal grounds, prayed to allow the appeal.

9. Heard Sri K.Siva Prasad, learned counsel for the appellants and Sri N.Rama Krishna learned counsel for respondent No.2/Insurance company. Perused the petition and other material available on record including the impugned order dated 30.08.2014.

10. On hearing both sides and upon perusing the material placed on record, the points that would arise for consideration are as follows:

(1) Whether the Venugopal Reddy died in the accident dated 24.10.2010 occurred due to the rash and negligent driving of tipper bearing No.AP H 4630?

(2) Whether the petitioners are entitled for compensation? If so, to what amount?

(3) Whether the order and decree dated 30.08.2014 passed in M.V.O.P.No.172 of 2013 by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge, Kadapa, are sustainable in facts and law?

(4) To what relief?

11. Admittedly, respondents have not filed any appeal or cross objection challenging the findings of the learned Tribunal, however, being the first appellate court and final fact finding court, this court has to re-examine and re-appreciate the entire oral as well as documentary evidence on record.

12. **Point No.1:**

(a) Now, it is necessary to analyze the evidence on record to answer the points. As seen from the record, during trial, petitioner No.1 filed examination-in-chief in lieu of chief examination by reiterating the averments mentioned in the petition. In order to prove the manner and method of accident, petitioners relied upon the evidence of PW Nos.1 & 2 coupled with Exs.A1 to A5 documents. It is evident from the record that PW.1 who is wife of the deceased is not an eye witness to the accident and the only available

evidence to prove the manner and method of accident is that of PW.2/father of the deceased and he categorically stated that the accident occurred due to the rash and negligent driving of driver of tipper bearing No. AP H 4630, and nothing useful material is elicited in his cross examination.

(b) Further, as seen from EX.A1/First information report, accident occurred due to the rash and negligent driving of tipper bearing No. AP H 4630 and after completion of investigation, police laid EX.A5/Charge sheet alleging that he is responsible for commission of accident. No rebuttal evidence is adduced by the respondents. Having filed counter, respondent No.2 failed to enter into witness box and he has not examined driver of tipper who is best person to speak about the accident and his non-examination is fatal to the case of respondents. It is already stated above that the respondent No.2 has not preferred any appeal or cross objection, challenging the finding of the learned Tribunal in respect of the rash and negligent driving of offending vehicle. So, the evidence of PW No.1 to 3 coupled with the EXs.A1 to A5 clinchingly proves that the accident occurred due to the rash and negligent driving of tipper, G.Venu Gopal Reddy sustained injuries and succumbed to the said injuries. Hence, this point is answered accordingly.

13. **Point No.2:**

(a) As per the version of the petitioners, petitioner No.1 is wife, petitioner No.2 is minor daughter and petitioner Nos.3 & 4 are parents of the deceased and the deceased hale and healthy, aged about 23 years, working as service engineer and was drawing Rs.8,000/- per month, as on the date of the accident and due to the sudden demise of husband of petitioner No.1, all the petitioners lost their financial support as well as love and affection. As seen from Ex.A18/SSC Certificate, date of birth of the deceased is 23-05-1987 and the accident occurred on 01.11.2010. So, it can safely be concluded that the age of the deceased was 23 years as on the date of accident and the relevant multiplier is ‘18’. The petitioners who are none other than the legal

representatives and dependants of the deceased are entitled for compensation.

(b) So far as earnings of the deceased is concerned, petitioners relied upon the evidence of P.W.3 coupled with EX.A6/Salary certificate, Ex.A8, A9 & A10/SSC marks list, Identity Card, Pan Card of the deceased, Exs.X1/ attested copy of wage register for the month of October, 2010, Ex.X2/ attested copy of PF register and Ex.X3/ESI register of the employee, to show that the deceased working as service engineer and was earning Rs.20,230/- per month. PW3 testified that he is the proprietor of Sri Sai Associates, Secunderabad, he is supplying man power to several organizations, on 01.10.2008, he appointed the deceased as Service engineer, deputed to work in L.G.Electronics (P) limited, Hyderabad and the said company used to pay salary of the deceased to him and in turn, he used to deposit the same in the account of the deceased and in the Month of October 2010, he paid salary of Rs.14,836/-, for 22 days. Having considered the aspect that the salary was calculated for 22 days only and if monthly salary of the deceased is calculated, it comes to Rs.20,230/-, the learned Tribunal considered monthly salary at Rs.14,836/- only. So, total monthly salary of Rs.20,230/- shall be taken into consideration. Further, this petition is filed by the four (4) dependants, whereas, the learned Tribunal deducted 1/3rd of the total income. So, 1/4th of the total income shall be deducted towards personal expenses of the deceased.

(c) Applying the principles in ***Sarala Varma and Others Vs. Delhi Transport Corporation and another***[1] and ***National Insurance Company Ltd Vs. Pranay Sethi and others***[2] and ***Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and others***[3], this court has assessed the compensation as follows:

---

[1] (2009) 6 SCC 121
[2] (2017) 16 SCC 680
[3] (2018) 18 SCC 130

Sl. No.	Heads		Calculation
1.	Annual Income (Rs.20,230 X 12)	Rs.	2,42,760.00
2.	Deduction towards personal expenses (2,42,760x1/4)	Rs.	60,690.00
3.	Total income (2,42,760-60,690)	Rs.	1,82,070.00
4.	Future prospects (40% of 1,82,070)	Rs.	72,828.00
5.	Total loss of dependency (1,82,070 + 72,828=2,54,898)x18	Rs.	45,88,164.00
6.	Loss of consortium (40,000x4) (spousal+parental+filial)	Rs.	1,60,000.00
7.	Funeral expenses	Rs.	15,000.00
8.	Loss of estate	Rs.	15,000.00
	Total	Rs.	**Rs.47,78,164.00 (rounded to Rs. Rs.47,78,200.00)**

(d) In the given facts and circumstances of the case, petitioners are entitled for **Rs.47,78,200.00/- (Rupees Fourty Seven Lakh Seventy Eight Thousand and Two Hundred Only)** and in this courts well considered view, the compensation awarded is just, adequate and reasonable, as the deceased left his dependents.

(e) So far as liability of the respondents is concerned, a finding is already recorded in point No.1 holding that the accident occurred due to the rash and negligent driving of driver of tipper bearing No.AP H 4630 and as such, respondent No.1/ owner of the Tipper is vicariously liable for the acts done by his driver. Respondent No.2 did not dispute the validity period of the policy and as such, respondent No.2/insurance company is liable to indemnify the liability of respondent No.1. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation. Hence, this point is answered accordingly.

14. Point No.3:

Upon reappraisal of the evidence on record, and for the foregoing reasons, this court came to the conclusion that the learned Tribunal erred in assessing the quantum of compensation and as such, the same is liable to be modified. Hence, this point is answered accordingly.

15. Point No.4:

In the result, and in view of the findings in point Nos.1 to 3, this Motor Accident Civil Miscellaneous Appeal is allowed, and the compensation awarded by the learned Tribunal is enhanced from Rs.21,96,384/- (Rupees Twenty One Lakhs Ninety Six Thousand Three Hundred Eighty Four Only) **to Rs.47,78,200.00/- (Rupees Forty Seven Lakh Seventy Eight Thousand and Two Hundred Only)** together with interest at the same rate as awarded by the Tribunal, from the date of the claim petition till the date of realization subject to payment of additional court fee on Rs. **Rs.27,78,200.00/- (Rupees Twenty Seven Lakh Seventy Eight Thousand and Two Hundred Only)** by the petitioners before the Registry within thirty (30) days from today.

(ii) Out of the said compensation amount, **Rs.32,78,200.00/- (Rupees Thirty Two Lakh Seventy Eight Thousand and Two Hundred Only)** is awarded to the petitioner No.1. **Rs.5,00,000/- (Rupees Five Lakhs Only)** is awarded to the petitioner No.2. **Rs.5,00,000/- (Rupees Five Lakhs Only) each** is awarded to the petitioner Nos.3 and 4. Apportionment is ordered accordingly.

(iii) Time for deposit, as aforesaid, with interest, excluding the amount, if any, already deposited, is two (2) months from the date of receipt of a copy of this judgment.

(iv) On such deposit, petitioner Nos.1, 3 and 4 are permitted to withdraw the compensation as awarded supra along with accrued interest thereon, excluding the amount, already paid.

(v) The award amount of petitioner No.2 shall be kept in fixed deposit, in any nationalized bank, till she attains majority.

(vi) There shall be no order as to costs.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

SUNITHA GANDHAM, J

Dt:25 .11.2026
knl