

HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.2512 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 19.08.2015 passed in O.P.No.276 of 2011 on the file of the Chairman, Motor Accidents claims Tribunal (District Judge), Nizamabad (for short "the Tribunal"), the appellants/claimants preferred the present appeal.

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

3. The facts, in issue, are as under:

4. The claimants, who are the wife, children and mother of one Shaik Anwar (hereinafter referred to as "the deceased") filed a petition, claiming compensation of Rs.8,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 11.12.2010. It is stated that on 11.12.2010 the deceased, along with others were travelling in Auto bearing No.AP 01 V 2064 from Navipet to Yethalam Village, and on the way the driver of the auto drove it in a rash and negligent

manner and dashed against a Tractor bearing No.AP 25 T 1159, due to which, the inmates of the auto received injuries and the deceased died on the spot. It is stated that prior to the accident, the deceased was hale and healthy and was doing agriculture and business in selling goats and sheep and getting Rs.15,000/- per month. On account of death of the deceased, the claimants lost their source of income. The 1st respondent being the owner of the vehicle and the 2nd respondent being insurer of the Auto are jointly and severally liable to pay compensation.

5. Before the Tribunal, the 1st respondent remained *ex parte*.

6. The 2nd respondent filed counter denying the averments in the petition including the manner in which the accident took place, age, income and avocation of the deceased. It is stated in the counter that the auto was overloaded at the time of accident and as such the 2nd respondent is not liable to pay the compensation.

7. Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident has taken place due to rash and negligent driving of the Auto bearing No.AP 01 V 2064 by its driver?
- 2) Whether the petitioners are entitled for compensation. If so, to what just amount and against whom?
- 3) To what relief?

8. During trial, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

9. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Auto and accordingly awarded an amount of Rs.8,40,000/- with interest @ 7.5 % per annum from the date of petition till the date of realization to be paid by the respondents.

10. The only contention raised by the learned Counsel for the claimants is 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 the future prospects and also Rs.77,000/- under conventional heads.

11. Sri A.V.K.S.Prasad representing Sri C.Narender Reddy, learned Standing Counsel for the 2nd respondent, would submit that the issue with regard to the future prospects has been considered by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others* (1 supra) and as per that judgment, the claimants are entitled 40% amount towards future prospects. It is further submitted that the compensation towards non-pecuniary damages has been rightly granted by the Tribunal and the same need not be enhanced.

12. 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.

13. Insofar as the quantum of compensation is concerned, a perusal of the impugned judgment would show that the Tribunal has rightly fixed the income of the deceased at Rs.5,000/- per month. Apart from the same, the claimants are entitled to

¹ 2017 ACJ 2700

addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (1 supra). Therefore, monthly income of the deceased comes to Rs.7,000/- (Rs.5,000/- + Rs.2,000/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation*² as the dependents are five in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.5,250/- per month. As per Ex.A3-P.M.E.Report, the deceased was aged about 28 years at the time of the accident and the appropriate multiplier would be '17'. Adopting multiplier '17', the total loss of dependency would be Rs.5,250/- x 12 x 17 = Rs.10,71,000/-. The claimants are also entitled to Rs.77,000/- under the conventional heads as per **Pranay Sethi's** case (1 supra). Thus, in all the claimants are entitled to Rs.11,48,000/-.

14. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.8,00,000/- as compensation and the quantum of

² 2009 ACJ 1298 (SC)

compensation which is now awarded would go beyond the claim made which is impermissible under law.

15. In *Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another*³, the Apex Court while referring to *Nagappa Vs. Gurudayal Singh*⁴ held as under:

“It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in *Nagappa vs. Gurudayal Singh* (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.”

16. In view of the Judgments of the Apex Court referred to above, the claimants are 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 claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

³ (2011) 10 SCC 756

⁴ 2003 ACJ 12 (SC)

17. Accordingly, the M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.8,40,000/- to Rs.11,48,000/-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization, payable by respondents 1 and 2 jointly and severally. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal.

18. However, the claimants are directed to pay Deficit Court Fee on the enhanced amount. There shall be no order as to costs.

19. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

21.04.2022
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