

***THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ M.A.C.M.A. No. 257 OF 2012

% 20-09-2023

M.Vijaya

....Appellant/petitioner

Vs.

\$ Siddhantha Residential School & anothers

.... Respondents/Respondents

! Counsel for the petitioner : Sri Pottigari Sridhar Reddy

Counsel for the Respondent No.2: Katta Laxmi Prasad

<Gist :

>Head Note:

? Cases referred:

1. 2016(2) ALD226 (FB)
2. (2017) 16 SCC 680
3. (2009) 6 SCC 121
4. MANU/SC/0480/2013
5. 2001 (1) ALT 495 DB

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

+ M.A.C.M.A. No. 257 OF 2012

Between:

M.Vijaya

....Appellant/petitioner

Vs.

\$ Siddhantha Residential School & anothers

.... Respondents/Respondents

JUDGMENT PRONOUNCED ON: 20.09.2023**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**M.A.C.M.A.No.257 OF 2012****JUDGMENT:**

The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner aggrieved by the order and decree dated 21.11.2006 passed in M.V.O.P.No.113 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (hereinafter referred to as 'the Tribunal').

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

3. Brief facts of the case are that the petitioner filed a claim petition claiming compensation of Rs.3,00,000/- on account of the death of M.Santosh Kumar (hereinafter referred to as "deceased") in a motor vehicle accident that occurred on 03.11.2003.

3(1) It is stated that on 03.11.2003 at about 8.45 a.m., the deceased was proceeding on his bicycle from Dwarakanagar towards Canara Nagar, Uppal, to attend his duties in Sri Industries and when he reached Jaya Nursing

Home, on National Highway No.202, Uppal Depot, one School Bus bearing No.AP 16 T 3699, coming from Uppal towards Ghatkesar side, was driven by its driver rashly and negligently and dashed the deceased's bicycle from the backside. As a result, the deceased fell and sustained head injury and multiple fracture injuries and died on the spot. The Police, Uppal, registered a case in Cr.No.588 of 2003 against the school bus driver. Hence, the claim petition.

4. Before the Tribunal, respondent No.1 was set ex-parte, and respondent No.2 filed a counter denying all the allegations made in the petition. They mainly contended that the alleged accident did not occur due to rash and negligent driving of the driver of the bus, but it occurred due to negligent riding of the bicycle. They further contended that the petitioner is not the legal heir of the deceased as she was not dependent on the deceased.

5. To prove the case of the petitioner, PWs.1 and 2 were examined and marked Exs.A1 to A11. No oral evidence was adduced on behalf of respondent No.2, but Ex.B1 was marked.

6. On appreciation of the evidence on record, the Tribunal partly allowed the petition by awarding compensation of

Rs.50,000/- under no fault liability with interest @7.5% p.a. from the date of petition till the date of realisation. Challenging the same, the present appeal is filed by the petitioner.

7. Learned counsel for the petitioner submitted that deceased was aged 22 years. He worked as a worker in Sri Industries and earning Rs.3,500/- p.m. The deceased was contributing the same to the welfare of his family. Further submitted that petitioner is the sister of the deceased and respondent No.3 is the wife of the deceased, who also had left the deceased long ago, and petitioner is the only legal heir of the deceased and in support of her version, Ex-A.11 Legal Heir Certificate is marked.

8. Learned counsel appearing for respondent No.2 contended that the petitioner is not the legal heir of the deceased. The order under challenge suffers no infirmity and as such no interference of this Court is required and prayed to dismiss the appeal.

9. Per contra, learned counsel for the petitioner relied upon the Full Bench Judgment passed by the erstwhile composite High Court of Andhra Pradesh at Hyderabad in the case of

Dr.Gangaraju Sowmini V.Alavala Sudhakar Reddy¹ and

had drawn the attention of this Court to Para Nos.13, 14 and

16 which reads as:

13. Before we proceed further, we refer to Rule 2(g) of the A.P.Motor Vehicles Rules, 1989. The said Rules are framed in exercise of powers conferred under Sections 28, 38, 95, 96, 107, 111, 138 and 176 of the Motor Vehicles Act, 1988. Rule 2(g) defines the word legal representative as under:

“Legal representative’ shall have the meaning assigned to it under Clause (11) of Section 2 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908)”

From a reading of the provisions under Sections 140, 163-A and 166 of the Act, it is clear that the scheme of the Motor Vehicles Act, 1988, which is a beneficial legislation to the victims of motor vehicle accidents, imposes liability on the owner of the vehicle, under Section 140 of the Act, to pay compensation on the principle of no fault. Fixed amounts are prescribed in the aforesaid Section for payment of such compensation even without any necessity of proving the fault. Similarly, Section 163-A of the Act provides for payment of compensation on structured formula basis to the legal heirs or the victims of the motor vehicle accidents. Under Section 165 of the Act, State Government is under obligation to constitute Motor Accidents Claims Tribunals in such areas as may be notified, for adjudication of claims for compensation in respect of accidents involving death or fatal injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. From explanation to Section 165 of the Act, which has got some bearing on the reference made, it is clear that claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, include claims for

¹ 2016(2)ALD226(FB)

compensation under Section 140 and Section 163-A. Section 166 of the Act provides for making an application for award of compensation arising out of an accident of the nature specified under Section 165(1). The provision under Section 166(1) expressly provides for making such application by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased. Section 166(1) further makes it clear that if all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. From a perusal of the said provision, it is clear that application for compensation can be made not only by dependant but by any legal representative of the deceased. Further, the word legal representative is defined in the Rules by adopting the same meaning of 'legal representative' as defined under Section 2(11) of the Code of Civil Procedure. In the judgment in Megjibhai Khimjis case (6 supra), a Division Bench of Gujarat High Court has clearly held that the brother of a person who dies in a motor vehicle accident, is entitled to maintain claim petition under Section 110-A of the Motor Vehicles Act, if he is a legal representative of the deceased. Such view is approved by the Honble Supreme Court also in Montford Brother's case (supra).

14. In view of the plain language under Section 166 of the Motor Vehicles Act, 1988, which is a substantive provision for making application for compensation, it is clear that either the injured person or the legal representative of the deceased are entitled to make an application for award of compensation. Dependency is a matter, which will have a bearing on the issue with regard to fixation of compensation and apportionment of compensation if there are more than one claimant, but at the same time, in view of the plain and unambiguous language used under Section 166 of the Motor Vehicles Act, the term legal representative does not mean dependant

only. It is fairly well settled that the legal representative is one who can represent the estate of the deceased. Further, in the judgment in Manjuri Beras case (supra), the Honble Supreme Court has held that the no fault liability envisaged under Section 140 of the Motor Vehicles Act is distinguishable from the rule of 'strict liability'. In the aforesaid judgment, it is further held that right to make an application has to be considered in the background of right to entitlement. It is further held that while assessing the quantum of compensation, the multiplier system is applied because of deprivation of dependency. In the same judgment, it is also held that since the amount to be awarded under Section 140 of the Motor Vehicles Act is a fixed/crystalised amount, the same is to be considered as a part of the estate of the deceased. Apart from the same, there can be a claim for compensation under other conventional heads which are to be necessarily incurred in the case of deaths.

16. In view of the clear and unambiguous language under Section 166 of the Motor Vehicles Act, it is clear that application can be made either by the injured or the legal representatives of the deceased. Though legal representative is not defined under the provisions of the Motor Vehicles Act, 1988, from Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, it is clear that the definition of 'legal representative' is given same meaning as defined under Section 2(11) of the Code of Civil Procedure. In view of the judgment of Honble Supreme Court in Manjuri Beras case (supra), it is clear that the compensation which is payable on account of no fault liability will form part of the estate of deceased. In that view of the matter, there is no basis for contending that the application is to be filed only by the dependants. As we have held that dependency is a matter to be taken into consideration for award of compensation and merely because one is not dependant, that by itself, is no ground for not entertaining any claim made for grant of compensation under the Motor Vehicles Act. In view of the clear language under Section 166 of the Act and in view of the judgment of Honble Supreme

Court in Manjuri Beras case (supra), wherein, it is held that the compensation to be awarded under Section 140 of the Motor Vehicles Act will form part of the estate of deceased, and further, as the Act also provides for compensation on other conventional heads, we are of the view that the non-dependant also can lay a claim by filing application under Section 166 of the Act. It is also to be noticed that the situations may arise, where, one may have suffered injuries initially but ultimately after filing a claim, may have succumbed to such injuries also. In such an event, lot of amount would be spent towards hospitalisation etc., and as already discussed in the judgment of Honble Supreme Court in Montford Brothers case (supra), it is common in the Indian society, where, the members of the family who are not even dependant also can extend their support monetarily and otherwise to the victims of accidents to meet the immediate expenditure for hospitalization etc., in such cases, unless the legal representatives are allowed to continue the proceedings initiated by the person who succumbs to injuries subsequently, such claims will be defeated and that will also defeat the very object and intendment of the Act. Any such measure would be wholly unequitable and unjust. Plainly, that would never be intent of any piece of legislation. For the aforesaid reasons and in view of the language under Section 166 of the Motor Vehicles Act, 1988 r/w. Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, we are of the view that even the legal representatives who are non-dependants can also lay a claim for payment of compensation by making application under Section 166 of the Motor Vehicles Act.

Learned counsel for the petitioner further submitted that as per above Full Bench Judgment, petitioner is eligible for the payment of compensation and prayed to enhance the compensation amount.

10. Heard both sides. Perused the material on record.

11. There is no dispute with regard to the involvement of the motor vehicle and the manner of the accident as stated in the claim petition. The Tribunal while answering the issue No.1: *whether the accident occurred due to the rash and negligent driving of the Bus bearing No.AP 16T 3699* Discussed the issue at length by taking into consideration the oral evidence of eyewitness PW.2 coupled with Ex.A1-FIR, Ex.A5-chargesheet, and Ex.A6 MVI report had rightly decided the issue in favour of the petitioner and the same is not challenged, thus attained finality.

12. With regard to the quantum of compensation, as per the evidence of PW.1, the deceased's sister deposed that deceased was aged about 22 years and was working in Sri Industries, earning Rs.3,500/- per month. Petitioner was dependent on the deceased and to prove the same, Legal Heir Certificate was marked under Ex.A9. Considering the above evidence, the Tribunal had awarded Rs.50,000/- under no fault liability.

13. Considering the fact that the deceased was aged about 22 years at the time of the accident and was earning Rs.3,500/- per month. Considering the age of the deceased, 40% future

prospects i.e. Rs.1,400/- (Rs.3500 x 40/100) is to be added as per the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi**². The monthly income of the deceased comes to Rs.4,900/- (Rs.3,500/- + Rs.1400). The Annual Income of the deceased comes to Rs.58,800/- (Rs.4,900 x 12). 1/3 of the deceased income towards personal expenses shall be deducted, which the deceased might have spent for himself, is proper. The appropriate multiplier as per the decision of **Sarla Verma Vs. Delhi Transport Corporation**³ is "18". Thus, the total loss of dependency would come to Rs.7,05,600/- (Rs.58,800/- - 1/3 x 18).

14. The Tribunal had not awarded any amount towards loss of estate and funeral expenses. This Court is inclined to grant Rs.16,500/- (Rs.15,000+10%) towards loss of estate, Rs. 16,500/- (Rs.15,000+10%) towards funeral expenses.

15. With regard to interest, the Tribunal granted 7.5% interest on the awarded amount and this Court is inclined to grant the same percentage i.e., 7.5% interest on the enhanced amount.

² (2017) 16 SCC 680.

³ (2009) 6 SCC 121.

16. In all, the petitioner/appellant is entitled to Rs.7,38,600/- towards compensation. (Rs.7,05,600 + 16,500 + 16,500). Though the claimed amount was Rs.3,00,000/-, invoking the principle of just compensation, and in view of the law laid down by the Hon'ble Supreme Court in **Rajesh vs. Rajbir Singh**⁴, and in a catena of decisions, this Court is empowered to grant compensation beyond the claimed amount. However, the petitioner/appellant shall pay the deficit Court fee on the enhanced compensation.

17. As seen from the cause title, the case against respondent No.1 was dismissed as the petitioner/appellant failed to comply with the conditional order dated 08.09.2011. However, the dismissal against respondent No.1/owner is of no consequence for the determination of a just, fair and reasonable quantum of compensation against the Insurance Company in view of the judgment of this Court in **Meka Chakra Rao Vs. Yelubandi Babu Rao**⁵. Hence, respondent No.1 and 2, jointly and severally, are liable to pay the compensation amount

⁴ MANU/SC/0480/2013

⁵ 2001 (1)ALT 495 DB

18. In the result, the M.A.C.M.A is allowed to enhancing the compensation from Rs.50,000/- to Rs.7,38,600/- (Rupees Seven lakh thirty eight thousand and six hundred only). Respondent No.1 and 2, jointly and severally are liable to pay the compensation amount with interest @7.5 % p.a. from the date of petition till the date of realization. Respondents No.1 and 2 are directed to deposit the said amount with interest after deducting the amount, if any, already deposited within two months from the date of receipt of a copy of this judgment. On such deposit, the petitioner is permitted to withdraw the same in accordance with the manner and proportion as determined by the Tribunal, subject to payment of deficit Court fee within two months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

Dated:20.09.2023

Note:

L.R. copy to be marked.

B/o

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