

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

M.A.C.M.A.No.2810 of 2014

JUDGMENT:

Being not satisfied with the quantum of compensation awarded *vide* judgment and decree, dated 30.01.2013 passed in M.V.O.P.No.1902 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge at Warangal (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation and also on fixing contributory negligence at 50% on the part of the driver of the auto in which the deceased was proceeding.

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

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

The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- for the death of one Barla Bhaskar (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 08.10.2004. It is stated that on the fateful day,

while the deceased was proceeding in the Auto bearing No. AP 24V 1443 from Siripuram Village, when the auto reached near Pochamma temple, the offending vehicle i.e., Bus bearing No. AP 36U 6282, owned by respondent No. 1, insured with respondent No. 2 and hired with respondent No. 3, being driven by its driver in a rash and negligent manner, dashed the auto. As a result, the deceased received multiple injuries and died. According to the claimants, who are parents and siblings of deceased, the deceased was 22 years and earning Rs.5,000/- per month as electrician. Therefore, they laid the claim for Rs.5.00 lakhs against the respondents towards compensation under various heads.

4. Before the Tribunal, while the respondent No.1 remained *ex parte*, respondent No. 2, insurance company, contested the O.P. by filing counter denying the manner in which the accident took place, including the age, avocation and income of the deceased. It is also stated that the quantum of compensation claimed is excessive and baseless and prayed to dismiss the petition. Respondent No. 3, RTC,

who is a hirer of the bus, filed the counter stating that it is not liable to pay any compensation.

5. Considering claim, counters and the oral and documentary evidence available on record, the Tribunal held that there was 50% negligence on the part of the driver of the auto in which the deceased was traveling and 50% negligence on the part of the driver of the offending bus and accordingly awarded an amount of Rs.1,92,000/- with interest @ 6% per annum from the date of petition till the date of realization to be paid by the respondent No.1 & 2 jointly and severally while dismissing the claim as against the respondent No. 3, RTC.

6. Heard both sides and perused the record.

7. It is contended by the learned counsel appearing for the appellants that the Tribunal erred in holding that there was 50% contributory negligence on the part of the driver of the auto in which the deceased was traveling, without there being any evidence adduced either by the owner or by the Insurance Company. As regards the quantum of compensation, it has been contended that the deceased is a skilled person as seen

from Ex.A.8, original identity card issued by Jangaon Private Electrical Workers' Association, which discloses the profession of the deceased as Electrician and therefore, the fixation of monthly income of the deceased by the tribunal at Rs.4,000/- is meagre and needs enhancement. It is further contended that as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, future prospects to the fixed income of the deceased at 40% needs to be added apart from Rs.33,000/- under the conventional heads.

8. On the other hand, the learned Standing counsel for the respondent No. 2, Insurance company, has contended that it is a case of head on collision and therefore, the Tribunal has rightly fixed the contributory negligence at 50% on the part of the driver of the auto and the same needs no interference by this Court. As regards the quantum of compensation, it is contended that except producing Ex.A.8, the claimants have not produced any proof to substantiate the income of the deceased and therefore, the fixation of monthly income of the

¹ 2017 ACJ 2700

deceased at Rs.4,000/- by the tribunal needs no interference by this Court.

9. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong."

10. In the instant case, while answering issue No.1, the Tribunal, considering the fact that the accident took place at 8:00 a.m., and as it was head on collision, has inferred that there was negligence on the part of the drivers of both the vehicles. Merely because the accident was as a result of head on collision in a broad day light, the tribunal came to the conclusion that there was contributory negligence on the part

of the driver of the auto at 50%. However, P.W.2, an eyewitness to the accident, who is also a co-passenger in the auto, clearly deposed that the accident occurred due to the rash and negligent driving of the bus by the driver. Furthermore, after investigation into the crime, Police laid the charge sheet against the driver of the bus holding that due to his negligent driving of the bus, the accident took place. Merely because the accident was due to head on collision, it cannot be presumed that there was contributory negligence on the part of both the drivers, more particularly, when the charge sheet was filed by the Police concluding that the accident had occurred as a result of the negligence on the part of driver of the crime vehicle only. Such being the case and based on the contents of the charge sheet, the finding of the Tribunal that there was negligence on the part of the driver of the auto in which the deceased was traveling, is not sustainable under law and the same is set aside holding that the accident had occurred due to the rash and negligent driving of the driver of the offending bus only.

11. As regards the quantum of compensation, it is no-doubt true that by producing Ex.A.8, the claimants have established the avocation of the deceased as Electrician. Therefore, since the deceased was a skilled person, fixation of monthly income at Rs.4,000/- by the tribunal is on lower side. Hence, this Court is inclined to fix the monthly income of the deceased at Rs.5,000/-. As rightly contended by the learned counsel for the appellants, since the deceased was 22 years at the time of the accident, as per the decision of the Apex Court in **Pranay Sethi** (supra), the claimants are entitled to future prospects at 40% to the established income of the deceased. Thus, the monthly future income of the deceased comes to Rs.7,000/- (Rs.5,000 plus Rs.2,000 being 40% thereof). Since the deceased was bachelor, after deducting 50% towards personal and living expenses of the deceased, the net monthly contribution of income by the deceased to the family comes to Rs.3,500/-. Considering the age of the deceased as 22 years, as per the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**², the appropriate multiplier is

² 2009 ACJ 1298 (SC)

'18'. Therefore, applying the multiplier '18', the total loss of dependency of the claimants comes to Rs.7,56,000/- (Rs.3,500 x 12 x 18). That apart, as per the decision in **Pranay Sethi** (supra), the claimants are entitled to Rs.33,000/- towards conventional heads. In addition thereto, the claimant Nos. 1 & 2, being the parents of the deceased, are entitled to Rs.40,000/- each 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**³. Thus, in all, the claimants are entitled for the total compensation of Rs.8,69,000/-. Therefore, the compensation awarded by the Tribunal is enhanced from Rs.1,92,000/- to Rs.8,69,000/- payable by the respondent Nos. 1 & 2 jointly and severally. The findings of the tribunal as regards the dismissal of claim against the respondent No. 3, RTC, who is hirer of the bus, is not disturbed as it was not under challenge in this appeal.

12. In the result, the appeal is allowed enhancing the quantum of compensation from Rs.1,92,000/- to

³ (2018) 18 SCC 130

Rs.8,69,000/- payable by the respondent Nos. 1 & 2 jointly and severally. The enhanced compensation shall carry interest at 6% per annum from the date of filing of the petition till the date of realization. The claimants are directed to pay the deficit court fee on the enhanced compensation. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the entire compensation is two months from the date of receipt of a copy of this judgment. On such deposit, the major claimants are entitled to withdraw their respective share amounts without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

11.01.2023
Tsr

SMT. M.G.PRIYADARSINI, J

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

M.A.C.M.A.No.2810 of 2014

DATE: 11-01-2023