

HON'BLE SRI JUSTICE M. GANGA RAO

MACMA.No.1244 of 2008

JUDGMENT:

The appellants are the claimants filed this appeal against the order and decree dated 08-06-2001 passed in M.V.O.P.No.169 of 1998 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Chittor, granting compensation of Rs.1,62,000/- together with proportionate costs and interest at 9% p.a. from the date of petition till the date of realization to the claimant as against the claim of Rs.2,00,000/- for the death of the son of the claimants in an accident that occurred on 15.05.1995 at about 11.15 P.M. at Mulabagal.

The claimants filed the O.P. under Section 166 of the Motor Vehicles Act claiming compensation of Rs.2,00,000/- for the death of their son Sri Karunakara Naidu, alleging that on the evening of 15.05.1995, their son Karunakara Naidu and some others went to Mulabagal to purchase spare parts to the jeep bearing No.AP-03-A-7610 and they travelled in the said jeep being driven by one Sri Ravikumar. After purchasing spare parts, they started at about 11.15P.M. at Mulabagal to return home and the driver of the jeep driving the vehicle in a high speed and on reaching near Pedda Uggini Cross, they noticed a lorry was coming in opposite direction and on seeing the same, the driver of the jeep swerved the vehicle to the left side and again to right side and dashed against the a big rock resulting in the jeep fell down in a ditch of 20' depth, and the son of the claimants died on the spot. A case was registered as Crime No.38 of 1998 by Gangavaram Police Station. The deceased was 30 years old at the time of accident and was doing business

and cultivation and he used to earn Rs.4,000/- per month by running Xerox centre in Palamaner and Rs.50,000/- per annum from agriculture. The 1st respondent was the owner of the jeep bearing No.AP-03-A-7610 and the 2nd respondent was the insurer of the jeep. Hence, the claimants claimed a sum of Rs.2,00,000/- for the death of their son.

While the 1st respondent remained ex parte, the 2nd respondent filed a written statement contending that the policy issued to the 1st respondent does not cover the risk of the passengers and the 2nd respondent is not liable to pay compensation. The claim made by the claimants is excessive, exorbitant and without any basis.

Based on the above pleadings, the Tribunal framed the following issues for trial.

- 1) Whether the petitioners are the legal representatives of the deceased G. Karunakar Naidu?
- 2) Whether the accident was caused due to the rash and negligent driving of the ill fated vehicle i.e. jeep bearing No.AP-03-A-7610?
- 3) Whether the petitioners are entitled for any compensation? If so, to what amount and against which the respondents?

During the course of trial, on behalf of the claimants, PWs.1 and 2 were examined and Exs.A.1 to A.3 were marked. On the other hand, no witness was examined and Ex.B.1 was marked on behalf of the respondents.

The Tribunal, based on the evidence of PW.1 and the contents in the claim petition, held that the claimants are the legal representatives of the deceased Karunakara Naidu. The Tribunal,

based on the evidence of PWs.1 and 2 coupled with documentary evidence of Ex.A.1, held that the accident occurred due to the rash and negligent driving of the driver of the jeep in which the son of the claimants was travelled and the driver of the jeep lost his control due to the rash and negligent driving of the jeep and hit a boulder. The Tribunal, considering the evidence of PWs.1 and 2 and the terms of Ex.B1-Policy, held that the policy does not cover the risk of the passenger travelling in the jeep and hence, the 2nd respondent is not liable to pay any compensation, if any awarded. Based on the evidence of PW.1 coupled with Exs.A.1 to A.3, fixed the income of the deceased at Rs.30,000/- and after deducting 1/3rd of the income towards personal expenses of the deceased from Rs.30,000/-, the Tribunal fixed the income of the deceased at Rs.20,000/- and by applying multiplier '8' to the income of the deceased, the loss of dependency was fixed at Rs.1,60,000/- ($\text{Rs.20,000/-} \times 8 = \text{Rs.1,60,000/-}$). The Tribunal also held that the petitioners are also entitled for a sum of Rs.2,000/- towards funeral expenses. In total, the Tribunal granted an amount of Rs.1,62,000/- with proportionate costs and interest at 9% p.a. from the date of petition till the date of realisation. The Tribunal dismissed the O.P. against the 2nd respondent. Assailing the said award, the petitioners filed the present appeal.

Learned counsel for the appellant submits that the Tribunal, having considered the evidence, erred in not granting the compensation as prayed for. He further contends that the Tribunal

having taken into consideration the evidence, erred in dismissing the O.P. against the 2nd respondent.

The finding of the Tribunal on Issue No.1 is that 2nd petitioner is the wife of the 1st petitioner and the deceased Karunakar Naidu was their son and he was unmarried and they are the legal representatives of the deceased Karunakar Naidu and the same has not been disputed by the respondents herein. A perusal of the evidence of PWs.1 and 2, coupled with Exs.A.1-FIR, and Ex.A.2-Post Mortem Certificate clearly show that a case was registered against the driver of the jeep for driving the jeep in a rash and negligent manner due to which he lost control of the jeep and hit a boulder resulting in the death of the deceased Karunakar Naidu. The said finding was not disputed by the respondents and the same became final in the absence of any challenge on that aspect.

Coming to the claim of the appellants with regard to quantum of compensation, the case of the appellants before the Tribunal is that, at the time of accident, the deceased was aged 30 years, and was doing business and cultivation and he used to earn Rs.4,000/- per month by running Xerox Centre in Palamaner and also getting Rs.50,000/- per annum from agriculture. But, during trial, PW.1 did not produce any material in support of the income of the deceased except saying that they owned lands. But, the Tribunal, based on the cost of living, age and occupation of the deceased at the relevant period, fixed the monthly income of the deceased at Rs.30,000/-. After deducting 1/3rd towards personal expenses of the deceased, the Tribunal fixed an amount of Rs.20,000/- towards contribution to

the family of the deceased and by applying the appropriate multiplier of '8' to the age of the deceased, the Tribunal arrived at Rs.1,60,000/- (Rs.20,000/- x 8 = Rs.1,60,000/-) towards loss of dependency. Having regard to the facts and circumstances of the case and for the reasons assigned by the Tribunal in arriving at such amount, the findings given by the Tribunal are just and reasonable and became final in the absence of any challenge by the respondents herein. In addition thereto, it is also to be noted that as per the decision of the Hon'ble Supreme Court in '**National Insurance Company Limited vs. Pranay Sethi & others**¹', where the larger bench of the Hon'ble Supreme Court framed certain guidelines for awarding compensation under various heads in the accident cases, the petitioners are also entitled for grant of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and transportation. Therefore, the appellants are entitled for an additional amount of Rs.30,000/-. Thus, in all, the appellants are entitled for grant of compensation of Rs.1,90,000/-.

However, in considered view of this court, in the peculiar facts and circumstances of the case, this court, in the interest of justice and following the judgment of the Hon'ble Supreme Court rendered in the case of **Manuara Khatun v. Rajesh Kr. Singh**², held on facts that since the victim was travelling in offending vehicle as gratuitous passenger, the insurance company cannot be held liable to suffer the liability out of the accident on the strength of the insurance policy

¹ 2017 ACJ 2700

² 2017 (2) ALD 65 (SC)

and that keeping in view the benevolent object of the Act and other relevant factors, the Hon'ble Supreme Court directed the insurance company to pay the awarded sum to the claimants therein and then to recover the said sum from the insured by applying the principle of 'pay and recover'. Hence, this court directed the 2nd respondent-insurance company to pay compensation amount of Rs.1,90,000/- awarded along with proportionate costs and interest @ 9% p.a. from the date of filing of the petition till payment to the appellant. Further, the 2nd respondent is directed to pay the compensation amount within two (2) months from the date of receipt of copy of the order and the 2nd respondent is given liberty to recover the amount of compensation paid from the 1st respondent owner of the offending jeep by filing execution proceedings before the Tribunal in the same O.P. proceedings.

Accordingly, the appeal is allowed in part, granting compensation of Rs.1,90,000/- by enhancing the same from Rs.1,62,000/- to Rs.1,90,000/- with proportionate costs and interest at 9% p.a. from the date of petition till the date of realisation of compensation amount. The appellants are entitled for equal amount of compensation awarded towards their share. There shall be no order as to costs.

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

M. GANGA RAO, J

Date: 13-02-2019

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