

HONOURABLE SRI JUSTICE M. GANGA RAO

MACMA.No.330 of 2008

JUDGMENT:

The appellant are claimants filed this appeal against the Award dated 18-05-2007 in MVOP.No.393 of 2005 passed by the Motor Accident Claims Tribunal-cum-District Judge, Ongole, granting a compensation of Rs.3,97,000/- with interest at 7½% and proportionate costs for the death of Kota Sambhi Reddy in a motor accident occurred on 19-08-2005.

2. The appellants, who are wife, minor children and the parents of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.5,50,000/-with interest at 24% p.a. for the death of Kota Sambhi Reddy, who died in a motor accident that occurred due to rash and negligent driving of the driver of the tractor bearing No.AP-27-L-2419 driven by its driver and insured with 2nd respondent. On 19-08-2005, at about 8.30 A.M., while the deceased was proceeding from Tallur to Ongole in his Hero Honda motor cycle bearing No.AP-27-G-2075 and reaching near Tellabadu kunta, the driver of the tractor AP-27-L-2419 drove the crime vehicle in a rash and negligent manner and dashed against the deceased resulting in the deceased received multiple injuries. The deceased, while undergoing treatment, succumbed to injuries on 29-08-2005 and a case in Crime No.62 of 2005 under Section 304 A IPC of Maddipadu Police Station was registered against the driver of the tractor of the 1st respondent insured with the 2nd respondent and that the respondents 1 and 2 are jointly and severally liable to pay compensation.

3. The 1st respondent filed his written statement contending that the tractor is insured with the 2nd respondent company and the policy is in force and the 2nd respondent is liable to pay the compensation, if any, to the claimants. The 2nd respondent-Insurance Company filed its written statement denying the averments of the claim petition and specifically stating that there is no rash or negligent driving on the part of the driver of the crime vehicle and there is no privity of contract between the parties and the accident occurred due to the rash and negligent driving of the deceased bike rider and that the owner and insurer of the bike are necessary parties and the claim of the claimants is very excessive and arbitrary. The 2nd respondent is entitled to protection under Sections 149 and 170 of the Motor Vehicles Act. Therefore, the claim petition is liable to be dismissed.

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

- 1) Whether the deceased died due to rash and negligent driving of the driver of the crime vehicle of R-1?
- 2) What is the correct age and income of deceased as on date of the accident?
- 3) Whether the petitioners are entitled for compensation, if so, to what extent and from whom?
- 4) To what relief?

During trial, on behalf of the claimants, PWs.1 to 3 were examined and Exs.A.1 to A.11 were marked. On the other hand, no witnesses were examined and Ex.B.1 was marked on behalf of the respondents.

Considering the evidence of PWs.1 and 2 coupled with documentary evidence Exs.A.1-copy of the FIR, Ex.A.2-altered FIR, Ex.A.5-copy of the charge sheet filed against the driver of the 1st respondent for his rash and negligent driving of the crime vehicle, the Tribunal held that there is no evidence to show that the bike rider was negligent or contributed to the accident occurred when both vehicles proceeding in opposite direction. The Tribunal also held that the accident was occurred due to rash and negligent driving of the crime vehicle and that the respondents 1 and 2 are jointly and severally liable to pay compensation. The Tribunal, while rejecting the claim of the claimants that the deceased was earning as Rs.6,000/-p.a. as motor winding mechanic and also doing dish business, in spite of documentary evidence as Exs.A.7 to A.10, fixed the income of the deceased at Rs.2,700/-p.a.at the time of accident. The Tribunal had taken the age of the deceased as 30 years and after deducting $\frac{1}{3}$ rd towards his personal expenses and by applying multiplier '17', the Tribunal arrived at a sum of Rs.3,67,200/- ($2700 \times \frac{2}{3} = 1800 \times 12 = 21,600 \times 17 = 3,67,200$) towards loss of dependency. In addition to that, the Tribunal also awarded an amount of Rs.15,000/- towards loss of estate, Rs.14,800/- towards loss of consortium. In total, the Tribunal awarded an amount of Rs.3,97,000/- as compensation to the claimants payable by the respondents 1 and 2 with interest at $7\frac{1}{2}\%$ p.a. and proportionate costs, being apportioned among the claimants. The Tribunal directed the respondents to deposit the compensation within a period of one month and granted liberty to the claimants to withdraw Rs.40,000/-

each, while ordering the rest of the amounts to be invested in any nationalized bank for a period of 3½ years. Aggrieved by the said award, the claimants filed the present appeal seeking enhancement of the compensation.

Heard the learned counsel for the appellants and the learned standing counsel for the respondent-Insurance company.

Learned counsel for the appellants would contend that the Tribunal erred in deducting 1/3rd towards personal expenses of the deceased when the claimants are five in number. He contended that as per the judgment in **Sarla Verma and others v. Delhi Transport Corporation and another**¹, when the claimants are more than four in number, it is appropriate to deduct personal expenses of the deceased at 1/4th. Hence, the appellants seek enhancement of the compensation.

Per contra, Smt. A. Jayanthi, learned standing counsel for the 2nd respondent Insurance Company would contend that the Tribunal rightly granted compensation to the appellants and there is no error apparent on the face of the record and that the impugned award does not call for any interference of this Court.

Having perused the material on record including the impugned award and considering the submissions of the learned counsel for both parties, this Court is of the considered view that the Tribunal erred in deducting 1/3rd out of earnings of the deceased towards personal expenses instead of deducting 1/4th of the earnings. It is to be noted that as per **Sarla Verma and others v. Delhi Transport Corporation and another** (supra 1), when the claimants are more

¹ (2009) 6 SCC 121

than four in number, it would be appropriate to deduct 1/4th out of earnings towards personal expenses of the deceased and since the deceased was aged about 30 years, the appropriate multiplier would be 17 and after deducting personal expenses of the deceased at 1/4th out of earnings, the loss of earnings could be arrived at Rs.4,13,100/- (2700 X 1/4 = 2025 X 12 = 24,300 X 17 = 4,13,100/-). In addition to the said amount, as per the judgment of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**², the appellants are also entitled to a sum of Rs.70,000/- under conventional heads, such as Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium, Rs.15,000/- funeral expenses. In total, the appellants are entitled to a sum of Rs.4,83,100/- by enhancing the compensation of Rs.3,97,000/- granted by the Tribunal. The Tribunal awarded interest at 7½ % p.a. based on the prevailing interest rates and the same could not be said to be on higher side. The other directions given by the Tribunal with regard to withdrawal of the amounts remained undisturbed. However, the respondents are directed to deposit the total compensation of Rs.4,83,100/- after giving credit to the amount, if any, paid to the credit of the O.P. within three months from the date of receipt of a copy of the order.

Accordingly, the appeal is partly allowed modifying the award dated 18-05-2007 in MVOP.No.393 of 2005 passed by the Motor Accident Claims Tribunal-cum-District Judge, Ongole, to the extent indicated above.

² 2017 (6) ALT 60 (SC)

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

M. GANGA RAO, J

Date: 31st January, 2019

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HONOURABLE SRI JUSTICE M. GANGA RAO

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31st January, 2019

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