

(2023) 03 TEL CK 0056

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 1385, 1631 Of 2015

ASPSRTC Another

APPELLANT

Vs

A Swathi Lavanya 3 Others

RESPONDENT

Date of Decision : 14-03-2023

Acts Referred:

Citation : (2023) 03 TEL CK 0056

Hon'ble Judges : Namavarapu Rajeshwar Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Both these Motor Accidents Civil Miscellaneous Appeals are being disposed of by way of this common judgment as both these appeals are directed against the award dt.29.09.2014 in M.V.O.P No.2725 of 2011 passed by the Chairman, Motor Accidents Claims Tribunal-cum-X Additional Chief Judge, City Civil Courts, Hyderabad (Hereinafter referred to as 'the Tribunal').

2. In M.A.C.M.A No.1385 of 2016 the Appellants/Respondents/RTC had challenged the award and prayed to set aside the same, and in M.A.C.M.A No.1631 of 2016, the Appellants/Petitioners/Claimants are aggrieved by the quantum of compensation and prayed to enhance the same.

3. For the sake of convenience, the facts in M.A.C.M.A No. 1631 of 2016 are discussed hereunder and the parties are hereinafter referred to as they were arrayed before the Tribunal.

4. Brief facts of the case are that on 09.08.2011 at about 9 a.m when one A. Ram Reddy (hereinafter referred to as 'the deceased') and his friend were proceeding on a motorcycle from Bonthapally towards Gummadidala Village and while reaching to Gummadidala outskirts near the substation, one APSRTC bus bearing No. AP-11-Z-4999 which was driven by its driver at high speed in a rash and negligent manner over took the said motorcycle bearing No. AP-28-BH-4408 turned the bus to the extreme left side and applied sudden brakes to avoid a

head-on collision with another vehicle, due to which, the APSRTC bus dashed the motorcycle and the deceased and his friend fell down and sustained grievous injuries. The doctors declared the deceased to be brought dead.

4.1 Prior to the accident, the deceased was hale and healthy, aged about 28 years and was earning Rs.30,000/- per month by doing a dairy farm business and used to contribute the same to his family. The accident was due to the rash and negligent driving of the driver of RTC Bus bearing No.AP-11Z-6771.

5. Respondents filed a counter denying the averments of the petition and contended that the driver of the RTC bus is not responsible for the accident.

6. On behalf of the petitioners, PWs 1 to 3 were examined and got marked Exs.A1 to A8. No evidence, either oral or documentary was adduced by the respondents.

7. On appreciating the material available on record, the Tribunal awarded Rs.17,55,000/- to the petitioners towards compensation. Aggrieved by the same, the petitioners and respondents have filed separate appeals as stated supra.

8. Heard both sides. Perused the record.

9. Learned counsel appearing for the petitioners had contended that the Tribunal erred in awarding a meagre amount towards compensation. He further contended that the Tribunal failed to fix the income of the deceased at Rs.30,000/- p.m but has considered it to be only Rs.10,000/- p.m and the same is to be enhanced. He further contended that the petitioners are entitled to compensation under conventional heads as per the decisions of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi (2017) 16 SCC 680 and Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram 2018 Law Suit (SC) 904. Accordingly, prayed to allow their appeal and dismiss the appeal of the respondents.

10. On the other hand, the learned counsel appearing for the respondents had contended that the Tribunal ought not to have awarded compensation to the petitioners as the petitioners failed to make the insurer of the motorcycle party to the case. He further contended that the income of the deceased cannot be considered to be Rs.10,000/- per month as no income proof was filed. In such situations, a notional income of Rs.4,500/- p.m. He also contended that the compensation awarded towards funeral expenses, loss of love and affection and loss of consortium are liable to be reduced. Accordingly prayed to dismiss the appeal of the petitioners and allow their appeal

11. This court is not inclined to interfere with the aspect as to how the accident took place viz. the 1st issue framed by the Tribunal, which was answered in favour of the petitioners, as the respondents failed to adduce any evidence to prove the contrary. Mere stating that there is a discrepancy between the evidence of PWs is not a ground to rebut the case of the petitioners.

12. It is observed from the impugned order that the Tribunal considered the monthly income of the deceased at Rs.10,000/- despite the petitioners claiming that the deceased was earning Rs.30,000/-p.m and filed Ex.A-7 bank statement of the deceased. Learned counsel for the petitioners prayed that the income is to be increased while the learned Counsel for the respondents prayed to reduce the income of the deceased to Rs.4,500/- as per the decision of the Hon'ble Supreme Court in Ramchandrapa Vs. Manager, Royal Sundaram Aliance Insurance Company Ltd.³. This Court is not inclined to alter the monthly income of the deceased as fixed by the Tribunal and it is taken as Rs.10,000/- p.m itself as mere filing of bank statement showing credit entries would not mean that the deceased was earning Rs.30,000/- p.m out of his business. It is observed that the Tribunal failed to award future aspects on the income of the deceased and the petitioners are entitled to the same as per Pranay Sethi (supra). Thus, loss of dependency would tune to as follows:

Head

Calculation

Monthly income of the deceased

Rs.10,000/-

Annual income

Rs.1,20,000/- (10,000 x 12)

Future prospects at 40% - Age of deceased – 28 years

Rs.48,000/- (40% of Rs.1,20,000/-)

Annual income + future prospects

Rs.1,68,000/-

Deduction towards personal expenses (1/4th as dependents are 4 in number)

Rs.42,000/- (Rs.1,68,000/- divided by 4)

Multiplier as per Sarla Verma (supra)

17

Loss of dependency

Rs.21,42,000/- (Rs.1,26,000/- x 17)

13. This Court is further inclined to reduce/enhance the compensation amount under other heads. Learned Counsel for the respondents contended that the compensation awarded under the heads 'loss of love and affection' and 'funeral expenses' is excessive. The same is liable to be altered/deleted. Further, the petitioners are entitled to compensation towards loss of estate, funeral expenses and loss of consortium.as per Pranay Sethi (supra).

14. Hence, the appellants/petitioners are entitled to the following compensation:

HEAD

AMOUNT AWARDED BY

THE TRIBUNAL

AMOUNT AWARDED BY

THIS COURT

Loss of dependency

Rs.15,30,000/-

Rs.21,42,000/-

Loss of estate

Nil

Rs.16,500/- (15,000 +

10% thereof) as per

Pranay Sethi.

Funeral expenses

Rs.25,000/-

Rs.16,500/- (15,000 +

10% thereof) as per

Pranay Sethi.

Loss of Spousal Consortium

Nil

Rs.44,000/- (40,000 +

10% thereof) as per

Pranay Sethi.

Loss of love and affection to 2nd petitioner

Rs.1,00,000/-

Rs.40,000/- (Now under

the head 'Loss of Parental Consortium'

Loss of love and affection and consortium to petitioners

Rs.1,00,000/-

Rs.80,000/- to Petitioners 3 & 4 (Now under the head 'Loss of Filial Consortium)

Total

Rs.17,55,000/-

Rs.23,39,000/-

15. Thus, the appellants/petitioners are entitled to the enhanced compensation of Rs.23,39,000/- as against the awarded amount of Rs.17,55,000/-

16. Learned counsel for the petitioner relied upon the decisions i) Nagappa Vs. Guru Dayal Singh – 2000 ACJ 12; ii) Adam Indur Muttmma Vs. Rathod Rediya - 2015 (4) ALD 585; iii) Ramla and Ors. Vs. Shantana Goudar – 2019 (1) ACC 346; stating that the Courts are empowered to grant compensation more than that of claim. A perusal of the said decisions reveals that the Courts are empowered to grant 'just' compensation, however, the claimants shall deposit the court fees on the enhanced compensation. As such, there is no irregularity in awarding compensation more than which that of the claimed amount.

17. Accordingly, M.A.C.M.A No. 1631 of 2015 filed by the petitioners/claimants is allowed, enhancing the compensation amount from Rs.17,55,000/- to Rs.23,39,000/-(Rupees Twenty Three LakhsThirty Nine Thousand only) which shall carry interest @ 7.5% p.a from the date of petition till the date of realization. The petitioners are directed to pay the deficit court fee on the enhanced amount within (02) months from the date of receipt of a copy of this judgment. Similarly, the respondents are directed to deposit the awarded amount along with interest and costs, after deducting the amount if any already deposited, within (02) months from the date of receipt of a copy of this judgment. The compensation amount shall be apportioned between the petitioners in the same manner and ratio as ordered by the Tribunal. There shall be no order as to costs.

M.A.C.M.A NO. 1385 OF 2015

In view of the findings in M.A.C.M.A No. 1631 of 2015, this M.A.C.M.A No. 1385 of 2015 is liable to be dismissed.

Accordingly, the M.A.C.M.A No.1385 of 2015 filed by the Appellants/Respondents/ RTC is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending in both the appeals, shall stand closed.