(2022) 07 TEL CK 0077

In the Telangana High Court

Case No : Motor Accident Civil Miscllaneous Appeal No. 245, 478 Of 2021

B. Nagamani APPELLANT

Vs

P. Masthyagiri RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 07 TEL CK 0077

Hon'ble Judges : G. Anupama Chakravarthy, J

Bench : Single Bench

Advocate : P Ramakrishna Reddy

Final Decision : Dismissed

Judgement

1. These two appeals are arising out of the same order dated 13.01.2020, in O.P.No.1212 of 2016 on the file of Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad. MACMA.No.245 of 2021 is filed by the claimants seeking enhancement of compensation from Rs.13,11,768/- to Rs.30,00,000/-. Whereas, MACMA No.478 of 2021 is filed by the Insurance Company, to set aside the orders passed in O.P.No.1212 of 2016 disputing the liability of the insurance Company.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P.

3. The O.P. is filed under Section 166 of the Motor Vehicles Act claiming compensation of Rs.30,00,000/- for the death of one B.Prakash in the accident that occurred on 10.02.2016 at about 11.48 a.m. due to the rash and negligent driving of the driver of the Auto bearing No.AP-23-X-4135.

4. Heard both sides and perused the material on record.

5. The learned Standing Counsel for the Insurance Company contended that the Driver of the 1st respondent-Auto was not holding valid driving licence as on the date of the accident, and therefore, the Insurance Company is not liable to pay

compensation in view of the violation of terms and conditions of Ex.B-1/Policy. It is further contended by the learned Counsel for the Insurance Company that the Tribunal erred in applying multiplier '18' instead of '17' and as all the medical bills are filed by the claimants, there is no scope of further enhancement in this case. It is further contended by the learned counsel for the Insurance Company that inspite of issuing Ex.B-2/legal notice dated 01.10.2016, the 1st respondent did not furnish valid driving licence or valid permit and fitness of the Auto bearing No.AP-23-X-4135 and hence, the Tribunal ought to have given a finding that the 1st respondent was not holding valid driving licence and ought to have exonerated the Insurance Company from the liability.

6. On the other hand, the learned counsel for the claimants contended that the claimants are entitled for a higher compensation and the Tribunal erred in not granting amount towards pain and suffering and other expenses as the deceased underwent treatment in the hospital for a period of 40 days and therefore, prayed to grant appropriate compensation under the other conventional heads.

7. There is no dispute as to the manner of accident. Ex.A-4 is the salary certificate of the deceased issued by Blue Birds Enterprises, Bhongir, dated 05.06.2016, which clearly disclose the income of the deceased as Rs.8,000/- per month. Admittedly, the author of Ex.A-4 was not examined before the Court for the reasons best known to the claimants. Therefore, the Tribunal have rightly fixed the Notional salary of the deceased as Rs.6,000/- per month in the absence of proper evidence. It is the further contention of the learned counsel for the claimants that the Tribunal has not granted any amount towards pain and suffering, transportation, extra-nourishment and attendant charges except for the medical bills. Even the record reveals that no amount was paid under the above said heads. In a case of injuries alone, the amounts will be granted under the above said heads, but the O.P. is filed claiming compensation for the death of the deceased and not for the injuries.

8. In view of the judgments of the Apex Court in National Insurance Co. Ltd. v. Swaran Singh & others (2004) 3 SCC 297 and in National Insurance Co. Ltd. v. Pranay Sethi & others 2017 ACJ 2700, if any violations are made by the owners or drivers of the crime vehicles, the insurance Company is liable to pay compensation to the victims and recover the same from the concerned owners, if the policy is in force. Ex.B-1 is the insurance policy issued to the crime vehicle bearing No.AP-23-X-4135, which clearly disclose that the policy is in existence from 19.10.2015 to 18.10.2016 and premium was paid for the 3rd parties, by the owner of the vehicle. Admittedly, the date of accident is 10.02.2016, therefore, the Insurance Company is liable to pay compensation to the claimants and recover the said amount from the owner i.e. the 1st respondent.

9. It is relevant to mention that claimant Nos.1 and 2 are the parents of the deceased and claimant Nos.3 and 4 are the unmarried sisters of the deceased. The father of the deceased was examined as PW-1. His evidence clearly disclose that the deceased used to draw a sum of Rs.20,000/- per month and the

deceased was unmarried. The claimants further claimed an amount of Rs.3,000/- towards damage of clothes, Rs.10,000/- towards damage of motorcycle, Rs.50,000/- towards pain and suffering. But, there is no documentary evidence on record to prove the damage of motorcycle, damage of clothes or for transportation charges of the dead body. In the case of death, while calculating the compensation, the conventional heads are, loss of dependency, loss of estate, funeral expenses and consortium, which also include the future prospects of the deceased. Therefore, the question of granting compensation under the other heads as pleaded by the counsel for the claimants, would not arise in case of death though the death was subsequent to the treatment undergone by the deceased, that too, in the absence of proper oral or documentary evidence before the Tribunal.

10. Admittedly, Exs.A-5 to A-8 disclose that the deceased underwent treatment in Aditya hospitals, Uppal and incurred a sum of Rs.3,74,568/- towards medical expenses, for which, compensation was already granted by the Tribunal under the head of ‘medical expenses’. PW-3 is the Billing Executive of Aditya Hospital and his evidence disclose that the deceased underwent treatment for head injury in their hospital from 10.02.2016 to 25.02.2016 i.e. for a period of 15 days for which, they have issued bills. It is pertinent to mention that the Doctor who treated the deceased, was not examined before the Tribunal and inspite of it, the Tribunal has granted Rs.3,74,568/- towards medical expenses. In the absence of either the documentary evidence or oral evidence as to the treatment undergone by the deceased, granting of amounts under the conventional heads would not arise, except for pain and suffering.

11. Therefore, the claimants are entitled to an amount of Rs.15,000/- towards pain and suffering as the deceased underwent treatment in the hospital for a period of 15 days.

12. On perusal of the order of the Tribunal, it is evident that the Tribunal has awarded the following amounts under different heads;

1.

Loss of dependency

Rs.6,48,000/-

2.

Future prospects

Rs.2,59,200/-

3.

Loss of Estate

Rs.15,000/-

4.

Funeral expenses

Rs.15,000/-

5.

Medical expenses

Rs.3,74,568/-

Thus, granted an amount of Rs.13,11,768/- towards compensation.

13. Admittedly, the deceased was aged about 28 years as on the date of the accident and the income of the deceased can be taken as Rs.6,000/- per month. As per the judgment of Hon'ble Supreme Court in Smt.Sarla Verma v. Delhi Transport Corporation & another (2009) 6 SCC 121, the multiplier applicable is '17' for the age group of 26 to 30 years. The annual income of the deceased is Rs.72,000/-. If 40% future prospects is added, it would come to Rs.1,00,800/- (Rs.72,000 + Rs.28,800). Admittedly, the deceased is an unmarried person and as per judgment in Sarla Verma's case ((2009) 6 SCC 121 supra), 50% is to be deducted towards personal expenses of deceased, and thus, the contribution of deceased to the family would come to Rs.50,400/- (Rs.1,00,800 - Rs.50,400). If the multiplier '17' is applied, it would come to Rs.8,56,800/-(Rs.50,400 X 17).

14. Thus, the claimants are entitled to the compensation under the following heads;

1.

Loss of dependency

Rs.8,56,800/-

2.

Loss of Estate

Rs.15,000/-

3.

Funeral expenses

Rs.15,000/-

4.

Medical expenses

Rs.3,74,568/-

5.

Pain and Suffering

Rs.15,000/-

6.

Consortium (4 claimants)

Rs.1,60,000/-

TOTAL

Rs.14,36,368/-

15. Accordingly, MACMA.No.478 of 2021 is dismissed and MACMA.No.245 of 2021 is partly allowed. The claimants are entitled for a total compensation of Rs.14,36,368/- with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, payable by respondents 1 and 2 (owner of the Auto bearing No.AP-23-X-4135 and its Insurance Company) jointly and severally within two months from the date of receipt of this order. The 2nd respondent shall pay the above said compensation and shall recover the same from the 1st respondent. All the claimants are equally entitled for the said amount and they are permitted to withdraw their shares of compensation, as the accident took place in the year 2016.

Pending miscellaneous applications, if any, shall stand closed.