
(2022) 11 TEL CK 0015

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 1978 Of 2006

Rudrakshi Narsamma 4 Ors

APPELLANT

Vs

Sheela Jaganadham Anr

RESPONDENT

Date of Decision : 11-11-2022

Acts Referred:

Citation : (2022) 11 TEL CK 0015

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Pingali Lakshmi, V Venkatarami Reddy

Final Decision : Allowed

Judgement

1. Feeling aggrieved by the judgment and decree dated 24.04.2006 in O.P. No.387 of 2003 passed by the Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nalgonda (for short 'the Tribunal'), the appellants preferred the present appeal.

2. Vide the aforesaid judgment, the Tribunal has awarded an amount of Rs.1,24,000/- (Rupees one lakh and twenty four thousand only) as compensation with proportionate costs and interest at 7.5% per annum thereon from the date of petition till the date of realization fixing liability on respondent Nos.1 and 2 jointly and severally as against the claim of Rs.2,00,000/- (Rupees two lakhs only) made by the appellants, wife and children of the deceased, for the death of 'Rudrakshi Venkaiah' in a road accident occurred on 12.11.2001.

3. Heard Ms. P. Lakshmi, learned counsel for the appellants and Mr. V. Venkata Rami Reddy, learned counsel for respondent No.2 - Insurer.

4. It is the contention of the appellants that on 12.11.2001 at about 4.00 p.m. Rudrakshi Venkaiah, 'deceased', along with his brothers, went to Thatikal village on their personal work. While returning on walk on the way at about 4.00 p.m. near Pedda Suraram Bus Stage, Tractor-Trailer bearing registration No.AP 24T

1632 and 1633 driven by its driver was proceeding towards Nalgonda from Nakrekal side with paddy load and stopped near to them and asked them to do labour work of unloading the paddy bags at Market Yard. The deceased and his brother agreed and boarded the tractor-trailer. They sat near the side of driver on the mudguard of the vehicle. While the tractor-trailer was proceeding towards Nalgonda, its driver drove it in a rash and negligent manner causing jolts and jerks, due to which the deceased fell down and the tyre of the trailer ran over him. The deceased sustained severe injuries and immediately he was shifted to Government Hospital, Nalgonda. During the course of treatment, he died.

5. It is the further contention of the appellants that prior to accident, the deceased was hale and healthy. He was aged 45 years and earning an amount of Rs.3,000/- per month by doing hamali work. It is claimed by the appellants that on account of untimely death of deceased, they lost their earning member and that they being wife and children are solely dependants on him and, therefore, they laid the claim seeking an amount of Rs.2,00,000/- as compensation against respondent Nos.1 and 2, owner of tractor-trailer and its insurer.

6. Respondent No.2 - Insurer filed counter denying the liability and also the quantum of compensation. It disputed the accident, liability etc. It is contended that the deceased was only a gratuitous passenger and not labour on the tractor. With the said contentions, respondent No.2 prayed to dismiss the claim petition.

7. Respondent No.1 - Insured filed his counter putting forth the contentions on the same lines as taken by the Insurer. However, he contended that respondent No.2 alone is liable to pay compensation and that he is not at all liable to pay any compensation as the vehicle was covered by insurance and finally prayed to dismiss the claim petition against him.

8. The Tribunal on consideration of entire material available on record, granted an amount of Rs.1,24,000/- towards compensation with interest @ 7.5% per annum thereon.

9. It is relevant to note that the Tribunal gave a specific finding that the accident had occurred due to rash and negligent driving of the driver of the aforesaid tractor-trailer. The respondent No.2 - Insurer did not file any appeal challenging the findings either as to rash and negligent driving of the driver of the tractor-trailer or as to grant of compensation awarded by the Tribunal. Therefore, the finding with regard to the accident caused due to rash and negligent driving of the driver of the tractor-trailer attained finality.

10. In view of the above said discussion, the only issue that falls for consideration is with regard to quantum of compensation.

11. The learned counsel for the appellants impugning the judgment would contend that the deceased was aged about 45 years and hale and healthy and used to earn an amount of Rs.3,000/- per month as on the date of accident. She further contended that the Tribunal relying upon Ex.A3 - inquest and Ex.A4 -

post-mortem examination report, decided the age of the deceased as 50 years. According to her, the Tribunal erred in assessing the monthly income of the deceased as Rs.50/- per day or Rs.1500/- per month and that the Tribunal also erred in deducting 1/3rd towards personal expenses of the deceased and taken 2/3rd of the income towards contribution to the family. According to the learned counsel, the Tribunal did not award any compensation on various heads, such as, love and affection, future prospects, transportation charges and loss of consortium etc. In support of the said contentions, she has relied upon the principle held by the Apex Court in *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, *National Insurance Company Limited v. Pranay Sethi* (2017) 16 SCC 680 and *Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram* (2018) 18 SCC 130.

12. The learned counsel for the appellants would further contend that though an amount of Rs.2.00 lakhs was claimed before the Tribunal, the appellants are entitled for more amounts and, therefore, prayed to award the just compensation. According to her, this Court being appellate Court is having power to award just compensation. In support the said contention, she relied upon the decision of the Apex Court in *Ramla v. National Insurance Company Limited* (2019) 2 SCC 192. With the said contentions, the learned counsel for the appellants prayed to award just compensation under various heads.

13. Per contra, supporting the judgment, the learned counsel for respondent No.2 would contend that the Tribunal rightly considered the age of the deceased as 50 years relying upon Exs.A3 and A4, inquest and post-mortem examination reports. According to him, on consideration of the evidence, both oral and documentary, the Tribunal assessed the earnings of the deceased as Rs.50/- per day or Rs.1500/- per month. According to him, the Tribunal rightly deducted 1/3rd towards personal expenses of the deceased and taken 2/3rds of the amount towards contribution to the family. With the said contentions, the learned counsel would contend that the Tribunal did not commit any error in awarding compensation warranting interference by this Court.

14. As stated above, by considering Ex.A3 - inquest and Ex.A4 - postmortem examination report, the Tribunal assessed the age of the deceased as 50 years. The appellants did not file any other document to prove the age of the deceased as 45 years as on the date of the accident. In view of the same, this Court is of the opinion that the Tribunal has rightly taken the age of the deceased as 50 years and needs no interference by this Court. The Tribunal has taken the multiplier as '12', but in view of the principle held by the Apex Court in *Sarla Verma*¹, the relevant multiplier for the persons in the age group of 46-50 years is '13'. Since the deceased would fit in the said age group as he was aged 50 years on the date of accident, relevant multiplier is '13' and accordingly the same is taken for arriving at just compensation.

15. The Tribunal by relying upon the contents of Ex.A2 - charge sheet and other evidence has assessed the earning capacity of the deceased as Rs.50/- per day

or Rs.1500/- per month. There is no other evidence produced by the appellants with regard to earning capacity of the deceased and they have not examined any other person to prove the income other than wife of the deceased as PW.1. In view of the same, this Court is of the opinion that the Tribunal rightly assessed the earning capacity of the deceased as Rs.50/- per day or Rs.1500/- per month since the accident took place in the year 2001. Accordingly, the annual income would be Rs.18,000/-.

16. In the case on hand, appellant No.1 is the wife of the deceased while appellant Nos.2 to 5 are their children and they are totally dependants on the deceased. Thus, there are 5 dependants on deceased and, therefore, 1/4th has to be deducted from the income of the deceased towards his personal and living expenses as per decision in Sarla Verma¹ (Rs.18,000/- x 1/4TH = Rs.13,500/-). As discussed supra, the relevant multiplier is '13'. Accordingly, the appellants are entitled for Rs.1,75,500/- (Rs.13,500/- x 13) towards loss of dependency to the family.

17. In the present case, the deceased died at the age of 50 years and used to do hamali work. On account of his untimely death, the appellants including minor children lost their bread-winner. In the said circumstances, the appellants are also entitled to certain amounts towards loss of future prospects. As per the decision in Pranay Sethi², 25% has to be taken into account towards loss of future prospects. Accordingly, 25% would come to Rs.43,875/- (25% on Rs.1,75,500/-) and the same is awarded to the appellants towards loss of future prospects.

18. In addition to the above, the appellants are also entitled to a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses as per the decision in Pranay Sethi².

19. Suffice to mention here that appellant No.1 being wife of the deceased lost her husband. Similarly, other appellants being children also lost their father at their tender age. It is to be noted that the right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. Further parental Consortium can be awarded to children who lose their parents in motor vehicle accidents under the Act. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims as observed by the Apex Court in Magma General Insurance Company Limited³. Therefore, an amount of Rs.40,000/- is awarded to appellant No.1 towards loss of spousal consortium, while an amount of Rs.40,000/- to each appellant Nos.2 to 5, making a total of Rs.1,60,000/- is awarded towards parental consortium. Another sum of Rs.5,000/- is awarded towards transport charges. Thus, in all, the petitioners are entitled to Rs.4,54,375/- (Rupees four lakhs fifty four thousand three hundred and seventy five only) as compensation under the following heads:

i) Loss of dependency .. Rs. 1,75,500-00

- ii) Future prospects at 25% .. Rs. 43,875-00
- iii) Funeral expenses .. Rs. 15,000-00
- iv) Loss of estate .. Rs. 15,000-00
- v) Spousal consortium .. Rs. 40,000-00
- vi) Parental consortium .. Rs. 1,60,000-00
- vii) Transportation Charges .. Rs. 5,000-00
- Total .. Rs. 4,54,375-00

Thus, the amount of Rs.4,54,375/- rounding it off to Rs.4,55,000/-(Rupees four lakhs and fifty five thousand only) is awarded as compensation which is just and reasonable. This Court is having power to grant just and reasonable compensation to which the appellants are entitled as held by the Apex Court in *Ramla v. National Insurance Company Limited* (2019) 2 SCC 192.

20. In the result, the appeal - M.A.C.M.A. No.1978 of 2006 filed by the Appellants is allowed. Accordingly, the judgment and decree dated 24-04-2006 in O.P. No.387 of 2003 passed by the Tribunal are modified enhancing the compensation to Rs.4,55,000/- (Rupees four lakhs and fifty five thousand only) is awarded from Rs.1,24,000/-(Rupees one lakh and twenty four thousand only) with interest at the rate of 7.5% per annum thereon from the date of petition till realization on the enhanced compensation. However, the appellants are directed to pay deficit court fee within a period of one (01) months from the date of receipt of a copy of this judgment. The compensation amount shall be apportioned among the appellants in the same proportion in which original compensation amounts were directed to be apportioned by the Tribunal. The respondent No.2 - Insurer is directed to deposit the above said amount with interest and costs after deducting the amount, if any, deposited within one month from the date of receipt of certified copy of this judgment. There shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.