

(2022) 03 TEL CK 0043

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 3297 Of 2009

Yarlagadda Bhagya Laxmi And Another

APPELLANT

Vs

N.Pundarikam And Another

RESPONDENT

Date of Decision : 15-03-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 03 TEL CK 0043

Hon'ble Judges : G. Sri Devi, J

Bench : Single Bench

Advocate : Azar Sravan Kumar

Final Decision : Partly Allowed

Judgement

Being not satisfied with the quantum of compensation awarded in the judgment and decree, dated 23.07.2009 passed in O.P.No.250 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), Nizamabad (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

For the sake of convenience, the parties will be hereinafter referred to as arrayed before the Tribunal.

The facts, in issue, are as under:

The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.6,00,000/- for the death of one Yarlagadda Bala Gangadhar Tilak (hereinafter referred to as "the deceased"), who died in a motor vehicle accident. It is stated that on 30.08.2006 while the deceased, along with one Pothoori Raju, were proceeding on their Scooter from Nizamabad to Krishnanagar village, when they reached in front of Polytechnic College, Kanteshwar, Nizamabad, one Lorry bearing No.AP 12 U 2552 driven by its driver in a rash and negligent manner at high speed and dashed the scooter, as a result of which, the deceased fell down, sustained grievous crush injuries to his head

and died on the spot. It is also stated that the deceased was hale and healthy and was earning Rs.10,000/- per month as he was a borewell mechanic. As the accident occurred due to rash and negligent driving of the driver of the Lorry, the claimants filed the claim-petition against the respondents 1 and 2, being the owner and insurer of the said Lorry.

Before the Tribunal, the 1st respondent remained ex parte. The 2nd respondent filed written statement denying the manner in which the accident took place including the age, avocation and income of the deceased. It is also stated that the driver of the Lorry was not holding valid and effective licence at the time of alleged accident and that the quantum of compensation claimed is excessive and baseless and prayed to dismiss the petition.

Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the accident has taken place due to rash and negligent driving of Lorry bearing No. AP-12/U-2552 by its driver?
2. Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
3. To what relief?

On behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1- insurance policy was marked.

After considering the oral and documentary evidence available on record, the Tribunal held that the accident was occurred due to the negligent driving of the driver of the Lorry and accordingly awarded an amount of Rs.4,04,000/- with interest @ 7.5% per annum from the date of petition till the date of realization to be paid by the respondents 1 and 2 jointly and severally. Challenging the same, the present appeal came to be filed by the claimants seeking enhancement.

Heard and perused the record.

A perusal of the impugned judgment would show that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Lorry by its driver, to which the Tribunal after considering the evidence of P.W.2 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Lorry and has answered in favour of the claimants and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of Lorry.

Insofar as the quantum of compensation is concerned, though the claimants claimed that the deceased was a borewell mechanic and earning Rs.10,000/- per month, the Tribunal has taken the income of the deceased at Rs.4,000/- as the claimants did not produce any proof to show that the deceased was earning

Rs.10,000/- per month. Therefore, this Court inclined to take the income of the deceased at Rs.4,000/- as fixed by the Tribunal. Apart from the same, the claimants are also entitled to addition of 25% towards future prospects, as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others 2017 ACJ 2700. Therefore, monthly income of the deceased comes to Rs.5,000/- (Rs.4,000/- + Rs.1000/-). From this, 1/3rd is to be deducted towards personal expenses of the deceased following Sarla Verma v. Delhi Transport Corporation 2009 ACJ 1298 (SC). After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.3,333/-per month and Rs.39,996/- per annum. Since the age of the deceased was 49 years at the time of the accident, the appropriate multiplier is '13' as per the decision reported in Sarla Verma v. Delhi Transport Corporation (2 supra). Adopting multiplier '13', the total loss of dependency would be Rs.39,996/- x 13, which comes to Rs.5,19,948/-. The claimants are also entitled to Rs.77,000/- under the conventional heads as per Pranay Sethi's case (1 supra). Thus, in all the claimants are entitled to Rs.5,96,948/-.

Accordingly, M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.4,04,000/- to Rs.5,96,948/-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.