IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

C.M.A.No.3258 of 2004

Between:

Kacharla Saroja and others.

….Appellants

and

Hari Mohan Sardar Lal Patel and others.

….Respondents

JUDGMENT PRONOUNCED ON : 07.12.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes

may be allowed to see the Judgments?

2. Whether the copies of judgment may be : No

Marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to : No

see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.M.A.No.3258 of 2004

JUDGMENT:

This appeal is filed by the claimants in O.P.No.684 of 1998 on the file of the Motor Accident Claims Tribunal – cum – I Additional District Judge, Karimnagar, seeking enhancement of the compensation awarded by the Tribunal.

The petition was filed by the claimants claiming an amount of Rs.10,00,000/- for the death of the husband of the first appellant, father of appellants 2 to 4 and mother of appellant No.5. It was alleged in the petition that the deceased was beedi leaves contractor and cloth merchant under the name and style of M/s.Kacherla Mallaiah and sons at Korutla and was earning Rs.15,000/- per month. He was an income tax assessee. When he went to Nagpur for business purpose in a car bearing registration No.HAV 8527 and was returning after completion of his work, when he reached a bridge on National Highway No.7 at about 5.54 pm on 01.04.1998 at a distance of one furlong from Khatara Village, one lorry bearing registration No.UP 70 L 8333 driven by the first respondent came in a rash and negligent manner at high speed in the opposite direction and hit the car, as a result of which the deceased and two others died on the spot and other inmates of the car received grievous injuries. The driver and owner of the vehicle remained *ex parte* and the case was contested by the third respondent – insurance company. Respondent No.4 is the first wife of the deceased and respondent No.5 is their daughter. They were living separately due to strained relations with the deceased. The deceased married one Pittala Suwarna by way of marumanuvu and she died after giving birth to the second appellant. Subsequently, he married the first appellant, who gave birth to appellants 3 and 4.

The Tribunal framed the following issues:

> “1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.UP 70 L 8333 by the 1st respondent?
>
> 2. Whether the petitioners are entitled to recover compensation and if so to what amount and from whom?
>
> 3. To what relief?”

The following additional issue was also framed by the Tribunal:

> “1. Whether the respondents 4 and 5 are entitled to get the compensation being the first widow and daughter of the deceased Rajendra Prasad respectively?”

The Tribunal held that the accident occurred due to rash and negligent driving of the driver of lorry bearing No.UP 70 L 8333.

With regard to the quantum of compensation, the age of the deceased was found to be uncertain. The inquest report stated that the deceased was aged 32 years old and based on the ages mentioned by the first wife and the other wife, the Tribunal came to the conclusion that the age of the deceased was 45 years. For the purpose of calculation of income, the Tribunal took into consideration Ex.A5 to A7, which are income tax statements for the years 1995-96, 1996-97 and 1997-98 respectively. In the said three years, the Tribunal took the lowest income of Rs.53,890/- shown in the receipts and after deducting the rebate of Rs.1,222/-, the income of Rs.52,668/- was taken as the annual income. Out of the said amount, 1/3rd was deducted and the contribution to the family was taken as Rs.35,112/- per annum. The multiplier of 10.45 was applied as per the decision in **Bhagawan Das v. Mohd.Arif**. An amount of Rs.15,000/- was awarded towards loss of consortium and another amount of Rs.15,000/- was awarded towards loss of estate. An amount of Rs.2,500/- was awarded towards funeral expenses and Rs.1,000/- towards transportation charges. Accordingly, the Tribunal calculated the compensation at Rs.4,00,420/- with interest at 9% per annum. Now the claimants filed the present appeal seeking enhancement of the said amount.

This Court is not inclined to arrive at a different figure of annual income from that arrived by the Tribunal for making the calculation. However, the Tribunal has deducted the rebate amount from the annual income and hence the annual income should have been Rs.53,900/-. Nearly six dependants are there on the deceased and the deduction of 1/3rd of the amount from the income is not warranted and it should have been confined to 1/4th and the multiplier of 11 should be applied to the said income and taking the enhancement, as held by the Supreme Court in **Rajesh v. Rajbir Singh**, in the case of self-employed persons in the age group of 40 to 50 years, the annual income would come to Rs.52,552/- (Rs.53,900/- + 30% enhancement = 53,900 + 16,170 = Rs.70,070/-; Rs.70,070 – 17,518 (70,070 X 1/4th deduction) = Rs.52,552/-). When multiplier 11 is applied, the total annual income would come to Rs.5,78,072/-. The loss of consortium should be enhanced to Rs.50,000/- and the funeral expenses to Rs.10,000/-. The loss of estate awarded by the Tribunal is also enhanced from Rs.15,000/- to Rs.25,000/- and the transportation charges of Rs.1,000/- is not disturbed. In all, the enhancement is as follows:

Head **Enhancement**

Rs.

Loss of annual income 5,78,072.00

Loss of consortium 50,000.00

Funeral expenses 10,000.00

Loss of estate 25,000.00

Transportation charges 1,000.00

Total 6,64,072.00

Thus, the award passed by the Tribunal is enhanced from Rs.4,00,420/- to Rs.6,64,072/- and the enhanced amount shall carry 9% interest. The said amount shall be withdrawn by the claimants and respondent Nos.4 and 5 in the proportion mentioned by the Tribunal.

The appeal is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

07.12.2015

vs

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