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Á)×5<70l7É),<�ï!„<�õ)õ)&<�ì*¼"0Ý&H\³77s&jl7ddddììììììÿÿÿÿ THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI C.M.A.No.2866 of 2004 JUDGMENT: The claimants, who are the wife and the mother of the deceased-Syed Ahmed, filed this appeal under Section 173 of the Motor Vehicles Act not having been satisfied with the quantum of compensation awarded by the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad vide award dated 15.04.2004 in O.P.No.698 of 2001. 2. I have heard the submissions of the learned counsel for the appellants/claimants ('the claimants' for brevity) and the learned counsel for the second respondent/insurance company ('second respondent' for brevity). Though 1st respondent is served with notice, none appeared for the 1st respondent/owner-cum-insured of the lorry bearing registration No.AAE-7124. I have perused the material record. 3. The point that falls for consideration is: Whether the compensation awarded by the Tribunal is not just, reasonable and fair in the facts and circumstances urged by the claimants? And, if so, what shall be the reasonable, just and fair compensation to be awarded to the claimant in this appeal? 4. POINT: 4. (a) The pleadings of the claimants, which are relevant for consideration, in brief, are as follows: - 'On the date of the accident, the deceased was the driver of a jeep that was involved in the accident and he was of 25 years of age and was earning Rs.5,000/- per month. He was contributing his entire earnings for the maintenance of the family. On account of his sudden death, the claimants had lost their sole bread winner and are being put to starvation. The 1st claimant lost her life partner at her young age. She had lost her marital happiness and conjugal society. The claimants are deprived of the love and affection of the deceased. There is no other male earning member in the family. The claimants have no other source of income for their livelihood. They depended on the earnings of the deceased for their livelihood. Hence the claimants are entitled to a compensation of Rs.6 lakhs.' Be it noted that the claimants had originally claimed Rs.3 lakhs as compensation but, later by way of amendment of the claim petition, had claimed Rs.6 lakhs as compensation.' 4. (b) The 1st respondent had filed a counter inter alia denying the manner of accident pleaded by the claimants and also the age, income and occupation of the deceased and had further pleaded that he is not liable to pay the compensation and that the vehicle is insured with the 2nd respondent/insurance company and that in case any compensation is payable, the same is payable by the insurance company and that the claim petition is liable to be dismissed against him. 4. (c) The 2nd respondent had filed a counter denying the age, occupation and income of the deceased and also the dependency of the claimants on the deceased and their entitlement to claim compensation. After the enhanced claim for compensation was made, the insurance company had filed an additional counter stating that the compensation claimed is high and excessive and is out of proportion. 4. (d) At trial, the 1st claimant and an eye witness to the accident were examined as PWs1 and 2 and exhibits A1 to A6 were marked on the side of the claimants. The Photostat copy of the insurance policy was marked as exhibit B1. No oral evidence was adduced on the side of the respondents. On merits, the Tribunal having recording a finding that the pleaded accident resulting in the death of the deceased had occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.AAE 7124 had awarded a compensation of Rs.4,50,800/- and had further held that both the respondents 1 and 2 are jointly and severally liable to pay the said compensation along with interest at 9% per annum from the date of petition till date of payment or realisation and also proportionate costs. 4. (e) The learned counsel for the claimants would contend that the Tribunal had ignored relevant facts and evidence and had wrongly fixed the income of the deceased and the multiplier and had failed to award compensation amounts under all the conventional heads and that compensation awarded under various heads is not adequate and reasonable and that therefore, the claimants are entitled to more compensation than awarded and that the claimants are entitled to more compensation than claimed in the facts and circumstances of the case. He had, therefore, prayed that the appeal may be allowed and just, reasonable and fair compensation be awarded. 4. (f) On the other hand, the learned counsel for the 2nd respondent/insurance company had contended that the claimants had claimed Rs.6 lakhs as compensation and that the deceased is admittedly not having any children and that the Tribunal having properly appreciated the oral and documentary evidence had awarded reasonable and fair compensation and that the claimants are not entitled to more compensation than that was awarded by the Tribunal and that the Tribunal had erroneously awarded interest at 9% per annum simple and that the interest should have been awarded at the rate of 7.5% per annum simple only on the compensation amount awarded. 4. (g) I have carefully perused the evidence. The 1st claimant is the wife and the 2nd claimant is the mother of the deceased. They are stated to be of 20 and 48 years of ages respectively as on the date of the claim application. The first step is to ascertain the multiplicand. Therefore, the income of the deceased should be first determined. The claim of the claimants is that the deceased was of 25 years of age as on the date of the accident and that he used to work as a driver of the jeep and earn Rs.5,000/- per month. In the crime records, the occupation of the deceased was shown as driver. PW2 is an eyewitness to the accident and he did not speak anything about the income of the deceased. PW1, the wife of the deceased, who is the first claimant herein had testified in line with her pleadings and had deposed that her deceased husband used to work as a driver of a jeep and earn Rs.5,000/- per month. She did not file any documents like salary certificate showing the income of her deceased husband. The employer of the deceased/the owner of the jeep was not examined. Having regard to the evidence brought on record and in the absence of any cogent evidence as to the income of the deceased, the Tribunal had determined the income of the deceased at Rs.3,000/- per month. In the facts and circumstances of the case, I do not find any reason to interfere with the said finding of the Tribunal. The crime record particularly, the post mortem report would show that the deceased was of 25 years of age as on the date of his death. Since the deceased was 25 years of age and was below 40 years of age, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects is necessary. Therefore, the monthly income of the deceased works to Rs.4,500/-. Coming to the deduction of personal and living expenses 1/3rd is to be deducted as the family members are only wife and mother. After deducting 1/3rd (Rs.1,500/-) towards personal and living expenses of the deceased, the multiplicand works out to Rs.36,000/- (12 x Rs.3,000/-). As already noted, the age of the deceased at the time of his death was 25 years. The appropriate multiplier as per the precedential guidance in Smt.Sarala Verma v. Delhi Transport Corporation is '18' (eighteen). Accordingly, the compensation under the head 'loss of dependency' works out to Rs.6,48,000/- (18 x Rs.36,000/-). Therefore, the compensation of Rs.6,48,000/- is awarded to the claimants under the head 'loss of dependency'. 4. (h) Coming to the amounts of compensation under the other heads, the Tribunal had awarded Rs.15,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. The learned counsel for the claimants having placed reliance on the decisions of the Supreme Court had contended that the Tribunal ought to have awarded Rs.1,00,000/- each under the heads of 'loss of love and affection' and 'loss of consortium' and also ought to have awarded Rs.25,000/- each under the heads 'loss of estate' and 'funeral expenses'. The amounts awarded, by the Tribunal in the well considered view of this Court, are not in accordance with the ratios in the precedents. In the decision in Anjani Singh and Ors. V. Salauddin & Ors, the Hon'ble Supreme Court by following the ratio in a three Judge Bench decision in Rajesh and Ors. V. Rajbir Singh and Ors had awarded in that case Rs.25,000/- towards 'funeral expenses' and Rs.1,00,000/- each towards 'loss of love and affection for the children' and 'loss of consortium to the wife of the deceased'. The Hon'ble Supreme Court had also held that it would only be just and reasonable that the Courts award at least Rs.1,00,000/- (Rupees One Lakh Only) towards loss of consortium. In the above precedent the Hon'ble Supreme Court had further awarded Rs.1,00,000/- (Rupees One Lakh Only) towards 'loss of care and guidance towards minor children' while awarding Rs.25,000/- (Rupees Twenty Five Thousands Only) towards funeral expenses. In the above precedent, the petitioners are the widow and the minor children of Bijender Singh, the deceased, who was aged about 33 years at the time of accident. Following the precedential guidance, a sum of Rs.1,00,000/- (Rupees One Lakh Only) is awarded to the first claimant, the wife of the deceased towards 'loss of consortium' besides Rs.25,000/- towards funeral expenses. Rs.5,000/- each is further awarded under the two conventional heads 'loss of estate' and 'transport expenses'. No compensations are awarded under the other heads as the claimants are only the wife and mother of the deceased. 5. Accordingly, the claimants are entitled to the following compensation amounts: Sl. No.Head of compensationAmount (in Rs.)(1)Loss of dependency6,48,000/-(2)Transport5,000/-(3)Loss of consortium1,00,000/-(4)Loss of estate5,000/-(5)Funeral expenses25,000/-Total7,83,000/-(Rupees Seven Lakhs Eighty Three Thousand only) 6 The claimants had claimed compensation of Rs.6,00,000/-. The compensation as determined and awarded worked out to Rs.7,83,000/- which is more than the amount claimed by the claimants. In the decision in the case of Nagappa v. Gurudayal Singh and others it was held that under the M.V Act there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount and that the function of the Tribunal/Court is to award just compensation which is reasonable on the basis of the evidence produced on record. Thus, as per the determination supra, the just, reasonable and fair compensation to which the claimants

are entitled to is Rs.7,83,000/-. In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. The point is accordingly answered. 7. Before parting with the case, it is necessary to mention that the learned counsel for the insurance company having placed reliance on the decision in Ramilaben Chinunbhai Parmar and others v. National Insurance Co.Ltd., and others had strenuously contended that in this cited case the Supreme Court had awarded Rs.50,000/- only under the conventional heads as granted, and that, therefore, apart from compensation under the head 'loss of dependency', the claimants are entitled to Rs.50,000/- only as compensation under all the conventional heads and no other amounts. A reading of the decision would show that the decision was rendered on the facts peculiar to the case. In paragraph 7 of the judgment of the cited case, the Hon'ble Supreme Court held as follows: - 'Even though we are not convinced with the calculation and reasoning given by the Tribunal, but keeping in view the peculiar facts and circumstances of the case, where the deceased died at an early age of 46 years, had 12 more years of service, would have got promotions, resulting in hike in his pay and emoluments, we feel that ends of justice would be met if the potential earning capacity of the deceased is fixed at RS.30,000/- p.m…………' It was also held as follows: 'In addition to that, the appellants are entitled to Rs.50,000/- as conventional amount as granted by the Tribunal.' Thus, the compensation was determined in that case having regard to the facts peculiar to the case. The Hon'ble Supreme Court in Padmasundar Rao v. State of Tamilnadu held that the courts shall not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Therefore, in the light of the ratios in the decisions relied upon by the learned counsel for the claimants which squarely apply to the facts of the case, the above decision relied upon by the learned counsel for the 2nd respondent/insurance company does not advance the defence of the insurance company in the facts peculiar to this case. 8. On the compensation awarded by the Tribunal, interest was awarded at the rate of 9% per annum simple. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award interest at the rate of 7.5% per annum simple on the said enhanced compensation amount. 9. In the result, the appeal is allowed with costs awarding a total compensation of Rs.7,83,000/- (Rupees Seven Lakhs Eight Three Thousands only). The enhanced compensation is Rs.3,32,200/-. The enhanced compensation is apportioned as under: 'Rs.2,32,200/- (Rupees Two Lakhs Thirty Two Thousands Two Hundred only) to the 1st claimant and Rs.1,00,000/- (Rupees One Lakh only) to the 2nd claimant. Having regard to the facts and circumstances, the insurance company is directed to deposit before the Tribunal the enhanced portion of compensation i.e., Rs.3,32,200/- (Rupees Three Lakhs Thirty Two Thousands Two Hundred only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit and also costs within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. The claimants shall pay, as per the procedure, the deficit court fee on the difference compensation i.e., the amount awarded in excess of the amount claimed. On such deposit of the amount before the Tribunal, the 1st claimant is permitted to withdraw entire costs and also Rs.2,00,000/- (Rupees Two Lakhs Only) for the present; and, the 2nd claimant is permitted with draw her entire share of compensation with interest thereon. The Tribunal shall keep the balance compensation amount of the 1st claimant in a fixed deposit in her name in any Nationalised Bank till the release of the same to the 1st claimant as per the norms applicable. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

_______________________ M. SEETHARAMA MURTI, J 5th June 2015 Vjl 2009 ACJ 1298 2014 ACJ 1565 = 2014 (6) SCALE 55 (2013) 9 SCC 54 AIR 2003 SC 674 2014 ACJ 1430 AIR 2002 SC 1334 PAGE PAGE 8 MSRM, J CMA_2866_04

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