HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No.199 of 2013

JUDGMENT:

Dissatisfied with the amount of Rs.9,77,000/- granted as compensation by the award dated 08.11.2012 in M.V.O.P. No.382 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District at L.B.Nagar (for short, 'the Tribunal') as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of P.Krishnaiah, who is husband of appellant No.1, father of appellant Nos.2 and 3 and son of appellant No.4, in a road accident that was occurred on 30.12.2009 at about 12-30 noon near Kulkalpally Bus Stage, appellant Nos.1 to 4 preferred the instant appeal under Section 173 of the Act seeking enhancement of compensation.

2. According to the appellants, the accident occurred while late P.Krishnaiah was returning from Mall side towards Kurmed side along with purchased kirana goods on his scooter bearing registration No.AP 28F 1314 and when he reached Kulkapally Bus Stage, an auto bearing registration No.AP 24X 5457, coming from his back in the same direction and in a rash and negligent manner at high speed, dashed against the scooter, resulting in sustaining serious injuries to the said P.Krishnaiah and causing his instantaneous death. The appellants claim that at the time of accident, the said P.Krishnaiah was aged about 33 years and carrying on business in kirana and general stores at Kurmed vide License No.21 and earning more than Rs.10,000/- per month.

3. Respondent No.1-owner of the auto bearing registration No.AP 24X 5457 remained *ex parte* and respondent No.2-insurer of the said auto filed counter denying the mode of accident and also put to strict proof of age, vocation and earnings of the deceased as introduced by the petitioners, and

sought for dismissal of the said petition.

4. The Tribunal basing on the evidence of P.Ws.1 to 3 and Exs.A.1 to A.11, awarded a sum of Rs.9,77,000/- against respondent Nos.1 and 2 with interest thereon at 7.5% per annum from the date of petition till date of deposit into the court with proportionate costs.

5. Aggrieved by the same, the appellants filed the present appeal seeking enhancement of compensation and, thereafter, they have also filed M.A.C.M.A. M.P. No.4303 of 2015 seeking enhancement of their claim from Rs.10,00,000/- to Rs.22,00,000/-, which is allowed today.

6. Sri C.M.Prakash, learned counsel for the appellants, submits that the Tribunal has not taken into account future prospects of the deceased while granting compensation basing on the judgment in ***Rajesh and others v. Rajbir Singh and others*** and ***Santosh Devi v. National Insurance Co. Ltd.,*** 50% of the income has to be taken into consideration towards future income or future prospects. It is also his submission that the deceased was a married person and having wife, two children and mother, as such, deduction of 1/3rd towards personal expenses is erroneous, and according to judgment in ***Sarla Verma v. Delhi Transport Corporation***, when the claimants are four in number, 1/4th has to be deducted towards personal expenses of the deceased. He further submits that the Tribunal awarded meagre amount towards consortium and funeral expenses and no amount was granted towards love and affection and as per judgment in ***Rajesh's*** case (supra 1), an amount of Rs.1,00,000/- has to be awarded to all the claimants towards loss of consortium, an amount of Rs.1,00,000/- has to be awarded to each of the claimants towards love and affection and Rs.25,000/- has to be awarded to all the claimants towards funeral expenses. He further submits that an amount of Rs.1,00,000/- has to be awarded towards loss of estate as per the judgments relied upon by him.

7. On the other hand, learned counsel Smt. P.Satya Manjula, learned

counsel for respondent No.2, submits that the compensation granted by the Tribunal is exorbitant and excessive, and the appellants have not filed any documents to show the income of the deceased. She also submits that the Tribunal has taken relevant factors in awarding the compensation and the compensation awarded by the Tribunal is on higher side and no enhancement is warranted. She further submits that the finding of the Tribunal that the deceased was earning Rs.10,000/- per month cannot be disturbed and now the appellants have also not shown any evidence to show that the deceased was earning more than Rs.10,000/- per month.

8. In ***Rajesh's*** case (supra 1), it is held that:

> "Since, the Court in *Santosh Devi* case actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma* case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

9. In view of the same, while calculating the annual income of the deceased, 50% of the income is to be added towards future prospects.

In ***Sarla Verma's*** case (supra 3), it is held that:

> "Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra* case, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of

dependent family members exceeds six."

10. In this case, admittedly, the total family members of the deceased are four in number. The Tribunal has deducted half of the income towards personal expenses of the deceased. As per ***Sarla Verma's*** case (supra 3), only $1/4^{th}$ has to be deducted towards personal expenses.

11. As per the judgment in ***Rajesh's*** case (supra 1) and ***Santosh Devi's*** case (supra 2), a minimum amount of Rs.1,00,000/- should be awarded towards loss of consortium and Rs.25,000/- towards funeral expenses. Appellant Nos.1 to 3, who are wife and two children of the deceased, are also entitled to Rs.1,00,000/- each towards love and affection and loss of care and guidance.

12. In view of the same, appellant Nos.1 to 4 are entitled to a total compensation as follows:

Towards loss of dependencyRs.10,000/- x $1/4^{th}$ = Rs.7,500/- x 12 x '16' multiplier	Rs.14,40,000/-
50% added more	Rs. 7,20,000/-
Loss of consortium	Rs. 1,00,000/-
Love and affection wife + 2 children	Rs. 3,00,000/-
Funeral expenses	Rs. 25,000/-
Loss of estate	Rs. 1,00,000/-
Total	Rs.26,85,000/-

13. Since the claim of the appellants-petitioners is only Rs.22,00,000/-, as per the orders in M.A.C.M.A.M.P. No.4303 of 2015, the compensation is limited to Rs.22,00,000/- and, accordingly, the same is granted to the appellants-petitioners. The said amount of compensation shall be apportioned among the petitioners in the same proportion as awarded by the Tribunal.

14. Accordingly, this appeal is allowed granting compensation of Rs.22,00,000/- (Rupees twenty two lakhs only) against respondent Nos.1 and 2 with interest at 7.5% per annum from the date of petition till date of realisation.

15. As a sequel thereto, miscellaneous petitions, if any pending in this appeal, shall stand closed.

A.RAJASHEKER REDDY, J

03.11.2015

siva