HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.CMA.No.130 of 2013

JUDGMENT:

This appeal is preferred by the claimant in MVO.P.No.329 of 2012 being aggrieved by the quantum of compensation in

judgment and decree, dated 12-10-2012, passed by the II Additional District and Sessions Judge(Fast Track Court), Sanga Reddy, whereby and whereunder the court below awarded compensation of Rs.4,28,000/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization out of the total claim of Rs.8,00,000/-.

It is the case of the appellant/claimant that she has filed O.P. for compensation against the respondents 1 to 4 seeking compensation under Section 166-A of Motor Vehicles Act, 1988

(for short " the Act") claiming to the wife and the

respondents 3 and 4 being parents of deceased Pirangi Nagesh, who died in accident on 29-04-2012 when proceeding from Sadasivpet to Yetigaddasangam village on his TVS Excel bearing No.AP-23-M-7789 along with one Golla Ramulu. When they reached within the limits of Atmakur village near Baba Shadulla Darga at about 3.00 am a Maruthi Alto car bearing No.AP 23 M 6929 came in opposite direction and hit the TVS Moped. As a result of which, both of them died due to severe injuries. The crime is registered in Cr.No.94 of 2012 under Sections 337 and 338 IPC against the driver of Maruthi Alto Car. The respondent No.1 is the owner of the car and respondent No.2 is insured. It is stated that deceased Nagesh was earning Rs.15,000/- per month by doing kirana business and he was contributing the same to his family and he is the only earning member of the family.

The 1st respondent remained exparte and the 2nd respondent filed counter before the Tribunal stating that the driver of offending vehicle Maruthi Car was not holding valid driving license. As such, the Insurance Company is not liable to pay the compensation and the claim of the claimant is excessive. The accident occurred due to the negligent driving of the deceased and the driver of the Moped is not holding valid license.

The respondents 3 and 4, who are the parents of the deceased filed counter contending that they are all dependants on the deceased and depending on the earnings of the deceased and he used to contribute his earnings towards his family.

Basing on the evidence of Pws.1 and 2 and Exs.A-1 to A-6 and coupled with the evidence of RW.1 and Ex.B.1, the Court below awarded an amount of Rs.4,28,000/-. Aggrieved by the same, the claimant filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellant submits that though as per **Rajesh v. Rajbir Singh**[1]**,** the appellant is entitled for Rs.1,00,000/- towards loss of estate, whereas the Court below granted Rs.10,000/- under each head. It is stated that the deceased was doing Kirana business and earning an amount of Rs.15,000/- per month. The Court below without considering the same, taken into account Rs.100/- per day, which is lower side even under Minimum Wages Act, the amount should be fixed at Rs.300/-. It is also argued that while calculating the dependency, 50% of the excess of the earning capacity should be taken towards future prospects. It is also not taken into consideration by the Court below as per the judgment of **Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited**[2]**.**

On the other hand, learned counsel for 2nd respondent-Insurance Company submits though no income proof of deceased was filed, the Court below has taken the income as Rs.3000/- per month. Before this Court also, there is no evidence to show that the petitioner was earning any income. As such, the Court below has rightly taken the income of the deceased. Learned counsel also submits that in the judgment of **Ramilaben Chinubhai Parmar v. National Insurance Company**[3]**,** the Apex Court has granted Rs.50,000/- as conventional amount . He sought for dismissal of the appeal.

It is to be seen that the deceased in this case is aged 28 years. In **Rajesh's** case (supra 1) though the deceased was aged 33 years, the Apex Court granted Rs.1,00,000/- towards consortium, Rs.25,000/-towards funeral expenses. In the judgment cited (supra 3) by the counsel for the Insurance company, the age of the deceased is 46 years and the Apex Court granted Rs.50,000/- towards conventional amount. As the facts of **Rajesh's** case are near to the present case, I am inclined to award Rs.1,00,000/- towards consortium and Rs.25,000/- towards funeral expenses.

Coming to the income of the deceased, no proof is shown regarding the income of the deceased and the Court below has taken Rs.100/- per day and granted compensation. Even in the appeal, there is no proof shown regarding the income of the deceased. But as per the Apex Court judgment cited (supra 2), strict proof of evidence regarding proof of income of deceased, in case of self-employment, some element of guess work has to be taken by the Court below, while calculating the income earned by the deceased. In the present case, in view of facts and circumstances, the Court below fixed the earning of the deceased at Rs.100/- per day and taken the same into account. But towards future prospects, while calculating the same, the Court below has not taken into account the future prospects by adding 50% to the income. As such to the income taken by the Court below at Rs.3,000/- per month, 50% excess should be added towards future prospects and it comes to Rs.3000/-+Rs.1500/- = Rs.4500/- towards future prospects and the deceased is aged 28 years, multiplier applicable is '17', it comes to Rs.9,18,000/-

(Rs.4500/-X 17 X 12) and from that amount 1/3rd should be deducted towards personal expenses as per **Sarala Verma v.Delhi Transport Corporation**[4] comes to Rs.6,12,000/- + Rs/1,00,000/- towards consortium and Rs.25,000/- towards funeral expenses. Hence, the appellant-claimant is entitled to compensation under the following heads:

Towards future prospects	Rs.6,12,000/-
Towards consortium	Rs.1,00,000/-
Towards funeral expenses	Rs. 25,000/-
Total	Rs.7,37,000/-

The compensation amount is distributed proportionately as per the award of the Court below, except to the extent of Rs.1,00,000/- towards loss of consortium and the appellant is entitled for Rs.1,00,000/- granted towards loss of consortium.

Accordingly, the MACMA is allowed awarding the compensation of Rs.7,37,000/- and the enhanced compensation shall carry interest at 7.5% p.a. from the date of claim petition till the date of realization. No costs.

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

A.RAJASHEKER REDDY,J

24-11-2015
Nvl

[1] (2013) 9 SCC 54
[2] (2014) 2 Supreme Court Cases 735
[3] 2014 ACJ 1430
[4] 2009 (6) SCC 121