THE HON'BLE SRI JUSTICE S.V.BHATT

M.A.C.M.A.No.1590 OF 2005

JUDGMENT:

The claimants in M.V.O.P.No.396 of 1999 in the Court of the Motor Accidents Claims Tribunal-cum-I-Additional District Judge, Srikakulam (for short 'the Tribunal'), are the appellants herein. The appeal is directed against the Award dated 02.03.2005 in M.V.O.P.No.396 of 1999.

The claimants, in all, claimed Rs.7,50,000/- towards compensation on account of death of Raghupatruni Ramakrishnarao in a motor vehicle accident that occurred on 12.05.1999 at 12.30 hours on NH5 road near Regulapadu Village in Srikakulam District. The Tribunal awarded compensation of Rs.4,07,720/- under different heads. Hence, the appeal for enhancement of compensation.

The case as pleaded by the parties is as follows:

The 1st appellant is the wife and 2nd and 3rd appellants are the son and daughter of deceased Ramakrishnarao. As the appeal is for enhancement of compensation granted by Tribunal, by taking note of the findings of Tribunal on issue No.1, I propose to consider the circumstances relevant for the disposal of the claimants' appeal.

It is not in dispute that Ramakrishna, while travelling in Tata Sumo Van bearing No.AP 37 K 459, died in the accident that occurred at about 12.30 noon on 12.05.1999. It is proved that the deceased was working as Lineman in Electrical Divisional Engineer's (Operations) Office, Tekkali. The deceased was drawing a monthly salary of Rs.8,357.50 Ps. At the time of accident, the deceased was aged 51 years. Due to the sudden demise of Ramakrishna Rao, it is alleged that the appellants claim to have lost the sole bread earner of the family. A sum of Rs.6,75,000/- is claimed towards pecuniary loss or loss of income, Rs.5,000/- towards funeral expenses, Rs.25,000/- towards traveling expenses, Rs.25,000/- towards loss of consortium to 1st petitioner and Rs.20,000/- towards mental agony and pain and suffering.

On the quantum of compensation claimed by the claimants, the case of insurance company is as follows:

> "The claim of compensation simultaneously under sections 166 and 140 of the Motor Vehicles Act with interest at 18% per annum from the date of accident is not maintainable as it is excessive and since the norms for granting interest will usually be considered as less than the bank rate of interest in existence."

The Tribunal settled the following issues for consideration:

(i) Whether the accident occurred due to rash and negligent driving of the van by the first respondent?

(ii) Whether the petitioners are entitled to recover compensation and if so, what amount of compensation and from which of the respondents?

(iii) To what relief?

On behalf of the appellants/claimants, P.Ws.1 to 3 were examined and Exs.A-1 to A-7 were marked. No oral or documentary evidence was adduced on behalf of respondents.

The finding of Tribunal on issue No.1 is that the death of Ramakrishna Rao is due to the rash and negligent driving of Tata Sumo bearing No.AP 37 K 459.

The Tribunal accepted the gross salary of the deceased, but on an erroneous view of the matter effected deductions from gross salary a few impermissible heads to arrive at contribution to the family. The reasoning of the Tribunal for excluding more amount than what is permissible reads as follows:-

> "………his gross salary cannot be taken into consideration for the purpose of calculating the compensation as the amounts of recoveries made from his salary will be accounted for GPF, LIC, GIS etc., and those benefits would have been paid after retirement of the deceased from service, had he not died and continued in service"

Thus, the Tribunal has deducted Rs.1,526.25 Ps from the gross salary of the deceased.

I have perused Exs.A-6 and A-7 and with the assistance of learned counsel appearing for both the parties, I have appreciated various deductions amounting to Rs.1,526.25 Ps and *prima facie* it appears that the deductions effected by the Tribunal are not in accordance with the settled position of law. At appropriate stage, while computing the compensation payable to the appellants,
I will set out the net salary to be taken into consideration. Thus, the amount determined by the Tribunal for loss of income or loss
of dependency is incorrect and requires to be properly worked out. The Tribunal awarded Rs.2,000/- towards funeral and transportation expenses as against the claim of Rs.5,000/- by the appellants. Likewise, the claim of Rs.25,000/- towards loss of estate was negatived by reference to the amount determined under the head loss of income for loss of dependency. In my considered view as well, there cannot be compensation under both the heads.

The 1st appellant claimed Rs.20,000/- towards mental agony and pain and suffering. The same was negatived on the ground that the deceased died on the spot. The 1st appellant claimed Rs.25,000/- towards loss of consortium, but the Tribunal granted Rs.5,000/-. Hence, the appeal.

Heard learned counsel for the appellants and the learned counsel for the respondent/insurer.

The appellants contend that deduction of Rs.1,526.25 Ps from the gross salary of Rs.7,787.50 Ps per month is erroneous and according to the appellants, Rs.80/- deducted towards professional tax should be deducted while computing the net contribution by the deceased to the family. The other amounts deducted from salary do not go to central fund and cannot be treated as permissible deductions. Therefore, the deduction of Rs.1,526.25 Ps from the gross amount of Rs.7,787.50 Ps is erroneous. On the other hand, after the permissible deduction available in this case is Rs.80/- which is professional tax is deducted, the net salary can be treated as Rs.7,707.50 per month (rounded off to Rs.7,707/-). I am in agreement with one third deduction thereon which works out to Rs.5,138/- per month (Rs.7,707 x 1/3=Rs.2569/-, Rs.7,707-Rs.2569 = Rs.5,138/-) and his yearly income would come to Rs.5,138/- x 12 = Rs.61,656/-. The multiplier applied by the Tribunal was '8' applicable for a person aged above 55 years, but not for 51 years. The relevant multiplier applicable to a person aged 51 years as per the decision in **SARLA VERMA V. DELHI TRANSPORT CORPORATION**[1] is "11'. The loss of dependency works out to Rs.6,78,216/- (Rs.61,656 x 11).

If 10% is added towards notional increase, the same works out to Rs.7,46,038/- (Rs.6,78,216/- +Rs.67,822/-). The 1st appellant is entitled to compensation of Rs.1 lakh towards loss of consortium. The amount granted by the Tribunal for transportation and medical expenses is very meager and nominal and in the considered view of this Court, a consolidated sum of Rs.15,000/- can be granted. Thus, the total compensation payable to the claimants works out

to Rs.8,61,038/-. The appellants claim a sum of Rs.7,50,000/- as compensation from 3rd respondent. Though the working of compensation is more than what is claimed by the appellants, I am of the view that the enhancement of compensation can be restricted to the amount actually claimed by the appellants.

The appeal is, accordingly, allowed. The claimants are entitled to interest at 7.5% p.a., on the enhanced compensation from the date of filing the petition till deposit into Court. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

S.V.BHATT

05th November, 2015
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[1] (2009) 6 SCC 121