THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.1396 of 2004

JUDGMENT:

Having not been satisfied with the compensation awarded, the claimants had preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) assailing the award dated 27.01.2004 of the learned Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Adilabad passed in MVOP.No.936 of 1999.

2. I have heard the submissions of the learned counsel for the appellants/claimants ('the claimants' for brevity) and the learned counsel for the third respondent/insurance company ('insurance company' for brevity). None appeared for the 2nd respondent/owner-cum-insured though notice has been served on the said respondent. The appeal against the 1st respondent/driver was dismissed for default.

3. The facts leading to the filing of the appeal by the claimants, in brief, are these:

The 1st claimant is the wife and the claimants 2 and 3 are the sons of the deceased-Kova Ramu and they are of 38, 19 and 15 years respectively at the time of the accident. They had filed the claim petition claiming compensation on account of the untimely death of the deceased due to his involvement in the pleaded motor vehicle accident. Though the 3rd respondent had disputed the nexus between the injuries and the death of the deceased and had *inter alia* contended that the deceased himself was responsible for the accident, on issue no.1, the Tribunal had recorded a finding to the effect that the pleaded accident resulting in the death of the deceased had occurred due to the rash and negligent driving of the lorry bearing registration no.MKW-7581 by its driver/the 1st respondent. Since no appeal or cross appeal are preferred either by the insured or the insurer, the finding on the said issue has become final. On merits, the Tribunal had awarded a compensation of Rs.93,641.80ps to the claimants. Having been aggrieved of the amount awarded, the claimants had preferred this appeal.

4. The learned counsel for the claimants would contend as follows: -'The Tribunal ought to have awarded the compensation of Rs.3 Lakhs as claimed with interest and costs, if not more compensation to which the claimants are entitled to under facts and law. The Tribunal had awarded a meagre amount of less than Rs.1 Lakh even though the claimants had pleaded and established that the deceased used to work as a driver on a lorry and earn Rs.3,000/- to Rs.4,000/- per month besides further income on agriculture. The Tribunal had erred in fixing the monthly wages of the deceased at Rs.1,000/-. The Tribunal had also wrongly adopted the multiplier '10.45' instead of adopting the correct and appropriate multiplier which is '18'. The Tribunal had wrongly determined the age of the deceased as 45 years without any basis. Therefore, the appeal may be allowed and just, reasonable and fair compensation, to which the claimants are entitled, may be awarded.'

5. On the other hand, the learned counsel for the insurance company had contended that the Tribunal had accurately considered the facts and the evidence and had correctly determined the multiplicand as well as the multiplier and that the compensation awarded is just, reasonable and fair and that in the facts and circumstances of the case, the contentions raised in the appeal of the claimants are devoid of merit and that the appeal is liable to be dismissed.

6. The points that arise for determination in this appeal are:

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 appropriate compensation to be awarded to the claimants, in the facts and circumstances of the case?

7. <u>POINT:</u>

7.1 The case of the claimants, which is relevant to the point, in brief, is as follows: - 'The deceased was an young man of 35 years of age at the time of his involvement in the accident and that he was hale and healthy and was working as a labourer in Ginning Factory at Boath and that he was a very good and experienced cultivator and that he used to grow commercial crops like cotton and chillies besides vegetables throughout the year and that the deceased used to supply vegetables to Nirmal town and earn an income of Rs.3,500/- per month excluding transport and other expenses and that his net income used to be Rs.42,000/- to Rs.45,000/- per year and that the deceased was the sole bread earner of the family and that on account of his death due to involvement in the pleaded accident, the claimants had suffered irreparable loss and that the claimants had lost the love and affection of the deceased and had suffered pain and mental agony.'

7.2 On the other hand, the defence of the insurance company on this relevant aspect is in the nature of general and specific denial; and, the insurance company had put the claimants to strict proof of the averments in the claim petition and their entitlement to the amounts claimed.

7.3 The 1st claimant who was examined as PW1 had deposed in line with the pleadings and had asserted about the occupation and the income of the deceased. However, she did not file any documents to show that the deceased owned any landed property or that he was earning further income by working as a labourer in Ginning factory at Boath. She had denied the suggestion that the deceased was more than 60 years of age at the time of his death due to involvement in the accident. However, she had admitted that she did not file any documentary evidence to show the income of the deceased. PW2 is an eyewitness to the accident. No evidence was adduced on the side of the insurance company.

7.4 Coming first to the aspect of multiplier, though the claimants had pleaded that the deceased was of 35 years of age at the time of his death, no documentary evidence was produced regarding his age. As already noted, PW1 had denied the suggestion that the deceased was of more than 60 years of age at the time of accident. Be that as it may. The certified copy of the medical certificate-exhibit A3, which was furnished by the Doctor while giving opinion as to the cause of death of the deceased would show the age of the deceased as 45 years. Therefore, in the absence of any other credible evidence, it is appropriate to accept that the age of the deceased as on the date of his death was 45 years. As per the ratio in the decision in **Sarala Verma v. Delhi Transport Corporation and another**[1]**,** the appropriate multiplier is '14' (fourteen). Coming next to the monthly income of the deceased, as already noted, though the claimants had stated that the deceased used to work as a labourer in Ginning Factory at Boath and that he was a very good and experienced cultivator and that he used to grow commercial crops like cotton and chillies besides vegetables throughout the year and that the deceased used to supply vegetables to Nirmal town and earn an income of Rs.3,500/- per month excluding transport and other expenses and that his net income used to be Rs.42,000/- to Rs.45,000/- per year, the claimants did not, however, adduce any documentary evidence to show that the deceased owned and cultivated the lands and worked as a labourer. Neither the employer nor a representative of the owner of the Ginning Factory in which the deceased was said to have worked as a labourer was examined. However, the fact remains that the deceased was an able bodied middle aged person capable of doing hard work and earn income. The accident in this case had occurred on 23.05.1989. Therefore, it is reasonable to fix the monthly earnings of the deceased at Rs.1,500/-. Considering the fact that the age of the deceased was below 50 years and following the ratio in the decision in **Sarala Verma (supra)** 30% of actual salary to the actual salary income of the deceased towards future prospects has to be added. Therefore, the monthly income of the deceased works out to Rs.1,950/- (Rs.1,500/- + Rs.450/-). As the number of dependant family members is 3, a 1/3rd is to be deducted from the said amount towards personal and living expenses of the deceased. If so deducted, the monthly contribution to the family works out to Rs.1,300/-. The annual loss of dependency works out to Rs.15,600/- (Rs.1,300/- x 12). If the said multiplicand is multiplied by the multiplier '14' (fourteen), the compensation under the head 'loss of dependency' works out to Rs.2,18,400/- (15,600/-

x14). Therefore, the compensation of Rs.2,18,400/- is awarded to the claimants under the head 'loss of dependency'.

7.5 Coming to the amounts of compensation under the other heads, the Tribunal had awarded Rs.10,000/- under all other heads including loss of consortium. 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', 'loss of consortium' and 'loss of estate' and Rs.25,000/- towards funeral expenses. The amount awarded, by the Tribunal in the well considered view of this Court, is not in accordance with the ratios in the precedents. In the decision in **Anjani Singh and Ors. V. Salauddin & Ors**[2]**,** the Hon'ble Supreme Court by following the ratio in a three Judge Bench decision in **Rajesh and Ors. V. Rajbir Singh and Ors**[3] 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'. Now it is pertinent to refer to the decision in the case of **Rajesh and Others vs. Rajbir Singh and others** [3 supra]**,** wherein, the Hon'ble Supreme Court held to the following effect: " 'Funeral expenses' does not mean the fee paid in the crematorium or the fee paid for the use of space in the Cemetery and that there are many other expenses in connection with the funeral, besides expenses associated with religious practices and conventions and all those religious practices and conventions are very expensive." 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; further Rs.1,00,000/- is awarded towards ‘loss of love and affection and career guidance to the children’; and, Rs.5,000/- each is further awarded under the two conventional heads ‘loss of estate’ and ‘transport expenses’.

7.6 Accordingly, the claimants are entitled to the following compensation amounts:

Sl. No.	**Head of compensation**	**Amount (in Rs.)**
(1)	Loss of dependency	2,18,400-00
(2)	Loss of consortium	1,00,000-00
(3)	Transport	5,000-00
(4)	Loss of estate	5,000-00
(5)	Funeral expenses	25,000-00
(6)	Loss of love and affection and career guidance	1,00,000-00
Total		**3,53,400-00**

(Rupees three Lakhs Fifty Three Thousand and Four Hundred only)

7.7 The Tribunal had awarded Rs.93,641.80ps as against the claim of Rs.3,00,000/-. The compensation as determined and awarded worked out to Rs.3,53,400/- which is more than the amount claimed by the claimants. However, the learned counsel for the claimants relied upon the decision in the case of **Nagappa** v. **Gurudayal Singh and others**[4] wherein 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 reasonable, just and fair compensation to which the claimants are entitled to is Rs.3,53,400/-. In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. The point is accordingly answered.

8. 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. On the compensation already awarded, the Tribunal had granted interest at 9% per annum simple.

9. In the result, the appeal is allowed with costs awarding a total compensation of Rs.3,53,400/- (Rupees Three Lakhs Fifty Three Thousand Four Hundred only). The enhanced compensation is Rs.2,59,759/. The enhanced compensation is apportioned as under: 'Rs.1,00,000/-(Rupees One Lakh only) to the 1st claimant; Rs.1,00,000/- (Rupees One Lakh only) to the 3rd claimant; and Rs.59,759/- (Rupees Fifty Nine Thousand Seven Hundred and Fifty Nine 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.2,59,759/- (Rupees Two Lakhs Fifty Nine Thousand Seven Hundred and Fifty Nine 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.1,00,000/- (Rupees One Lakh Only) for the present and the 2nd claimant is permitted to withdraw his entire share with interest. The 3rd claimant is permitted to withdraw his share of compensation after getting himself declared as a major as per procedure established by law. The Tribunal shall keep the balance compensation amount of the 1st claimant and the compensation amount of the 3rd claimant in separate fixed deposits in any Nationalised Bank till the release of the same to the respective claimants as per the norms applicable.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

5th June, 2015
Vjl

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[1] 2009 ACJ 1298

[2] 2014 ACJ 1565 = 2014 (6) SCALE 55

[3] (2013) 9 SCC 54

[4] AIR 2003 SC 674