HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A. No.4964 of 2008 AND M.A.C.M.A.No.427 of 2009

COMMON JUDGEMENT:

As these two appeals are directed against the common order dated 10.08.2004 passed in M.V.O.P.No.261 of 2003 and M.V.O.P.No.262 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool, they are being disposed of by this common judgment.

M.A.C.M.A.No.427 of 2009 is filed by the claimants in M.V.O.P.No.262 of 2003 where as M.A.C.M.A.No.4964 of 2008 is filed by the claimants in M.V.O.P.No.261 of 2003 seeking enhancement of the compensation.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

The facts in issue are as under:

O.P.No.261 of 2003 was filed by the legal representatives of the deceased-Nagaraju claiming compensation of Rs.4,00,000/-. Similarly O.P.No.262 of 2003 was filed by the mother of the deceased claiming compensation of Rs.5,00,000/- for the death of her son-Nageswara Rao. It is stated that on the fateful day at about 02.30 p.m. while both the deceased Nagaraju and Nageswara Rao were going on a motorcycle bearing registration No.A.P.21/G/2647 from Dhone to Gooty which was being driven by Nageswara Rao and when they reached Peddagutta turning near Pododdi village, one lorry bearing registration No.AAQ-6142 belonging to the 1st respondent which was insured with 2nd respondent, came from behind at a high speed driven by its driver in a rash and negligent manner and hit the motorcycle. As a result of which, both Nageswara Rao and Nagaraju received serious injuries and died instantaneously. Hence, the present application is filed by the mother of the deceased-Nageswara Rao claiming compensation, whereas the dependants of the second deceased-Nagaraju filed another application, against the respondents. Since the accident took place due to the negligence of the driver of the first respondent and as the second respondent is insurer of the said vehicle both of them are jointly and severally made liable to pay the compensation.

First respondent remained exparte while the second respondent filed his counter denying the material placed on record. According to him, the lorry was never involved in the said accident. It is contended by second respondent that there is no material to show that the driver of the lorry was responsible for the accident and that the accident took place during the course of employment of driver of the lorry under the first respondent. Further, the petitioner has to prove that the 1st respondent was the owner, there was that valid insurance policy for the vehicle and they were entitled for the amount so claimed.

Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether, the accident that occurred on 29.08.2002 at about 2.30 p.m., at Peddagutta turning near Pododdi village, Gooty Mandal, Anantapur District, which resulted in the deaths of the deceased P.Nagaaju and Nageswara Rao was on account of the rash and negligent driving of the lorry No.AAQ-6142 by its driver ?

2. Whether the petitioners are entitled for the claimed amounts of Rs.4,00,000/- and Rs.5,00,000/- respectively, if not, how much and against whom ?

3. To what relief ?

Since both the claim-petitions are clubbed together, common evidence was adduced. The first petitioner in M.V.O.P. No.261 of

2003 was examined himself as P.W.1, whereas the petitioner in M.V.O.P. No.262 of 2003 i.e., the mother of the deceased-P.Nageswara Rao was examined as P.W.2. One Praveen Kumar and K.Ram Mohan Rao, who were cited as eyewitnesses to the incident, were examined as P.Ws.3 and 4. In support of their case, Exs.A-1 to A-7 and Ex.X-1 were got marked. Though no oral evidence was adduced on behalf of the contested respondent, but they got marked Ex.B-1-the insurance policy.

After analyzing the evidence available on record, the trial Court awarded Rs.93,500/- as compensation in M.V.O.P. No.261 of 2003 and a sum of Rs.3,18,500/- in M.V.O.P. No.262 of 2003. Challenging the same, the present appeals are filed by the claimants in M.V.O.P. Nos.261 and 262 of 2003 seeking enhancement of the same.

Insofar as M.V.O.P. No.262 of 2003 is concerned, the learned counsel for the claimant mainly submits that the Tribunal erred in fixing income of the deceased at Rs.2,500/- per month, when there is enough material on record to show that he was working as Mechanical Engineer, on a salary of Rs.4,000/- per month. He submits that the trial court erred in not taking into consideration the future prospects of the deceased and other benefits which he is entitled to under the Act. He further submits that the multiplier adopted for calculating the loss of income is also incorrect.

Insofar as M.V.O.P.No.261 of 2003 is concerned, the learned counsel for the claimants mainly submits that the Tribunal erred in awarding an amount of Rs.50,000/- towards no fault liability; Rs.25,000/- towards loss of dependency; Rs.15,000/- towards loss of estate; Rs.2,500/- towards funeral expenses and Rs.1,000/- towards transporting charges of the dead body without adopting the multiplier method. He submits that the petitioners in the above M.V.O.P., who are the brother, sister and sister's daughter of the deceased have to be treated as legal representatives of the deceased and are entitled for the claim made.

On the other hand, the learned Standing Counsel for the Insurance Company strenuously contends that the claimants in M.V.O.P. No.261 of 2003 are not entitled for any relief as they are not dependants on the deceased. She further submits that they are only entitled for the loss of estate and affection and other expenses incurred at the time of accident and nothing beyond that since they are not depending on him. In order to appreciate the rival contentions, it may be necessary to refer to the evidence on record which is as under :

P.W.3 was examined as an eyewitness to the incident. In his evidence P.W.3 categorically narrated the manner in which the accident took place. According to P.W.3 on 29.08.2001 at about 3.15 p.m., while himself and his friend Rama Sreenivasulu were going to Pothudodi village from Goothy on motorcycle and when they reached Pedda Gutta turning on National Highway No.7, near Anantapur-Kurnool border, they observed one motorcycle bearing No.A.P.21-G-2647 and a lorry bearing No.AAQ-6142. It is stated that at that time the driver of the lorry drove the vehicle in a rash and negligent manner and hit the motorcycle from behind. As a result of which, both of them fell down on the road and died on the spot. Meanwhile another motorcycle which was coming from behind also got skid and fell down. He identified both the deceased as Nageswara Rao and Nagaraju working in M/s. Vijaya Traders, which was carrying on constructions activity at Dhone. He took care about the bodies. To a suggestion that he was not present at the scene of incident was denied by him. It is also suggested to him that he came to the court only to help the family members of the deceased, but the same was denied by him. Though he was cross-examined at length, nothing useful was elicited to discredit his testimony.

The evidence of P.W.3 coupled with Exs.A-1, A-2, A-4 and A-5 amply establish that the accident took place due to rash and negligent driving of the driver of the lorry. Hence, the finding of the Tribunal with regard to manner in which the accident took place needs no interference.

Coming to the quantum of compensation awarded, I shall first deal with M.V.O.P.No. 262 of 2003 filed by P.W.2, against the death of her son in the said accident. In her evidence P.W.2 stated that the deceased-Nageswara Rao, who was aged about 24 years, was working as a Mechanical Engineer in Vijaya Traders, a construction company at Cuddaph and earning Rs.4,000/- per month. It is stated by her that on the date of accident he was working at Dhone and going to Gooty on the work of his employer. During cross-examination she admits that she has not filed the certificate showing the deceased-Nageswara Rao studied Mechanical Engineering course. But her evidence discloses that she placed on record Ex.A-7 to show that the deceased was working as Service Engineer in Vijaya Traders and was getting Rs.4,000/- as salary per month. But P.W.2 admits that she has not filed the appointment letter issued by Vijaya Traders in favour of the deceased-Nageswara Rao. However, she denies a suggestion that the deceased was not working in Vijaya Traders during his life time and was not getting Rs.4,000/- per month. Apart from that the material on record also indicates that the deceased was a Bachelor at the time of the accident.

P.W.4, who was working as an Accountant in Vijaya Traders, was examined to prove the income of the deceased-Nageswara Rao. In his evidence he categorically stated that at the time of the accident the deceased was drawing salary of Rs.4,000/- per month and that his last drawn salary in July 2002 was Rs.4,000/-. He placed on record Ex.X-1-the acquittance register evidencing the last drawn salary by the deceased-Nageswara Rao. It has been elicited from the cross-examination of P.W.4 that he was working as an Accountant in Vijaya

Traders and that the deceased was also working as a Mechanical Engineer in the same institution. But, however, he admits that he has not filed any document to prove that the deceased was working in Vijaya Traders. It has been elicited that the deceased-Nageswara Rao took salary of Rs.2,500/- per month in the month of June, 2002 as per the recitals of Ex.X-1 though the same does not contain the seal of the company. However, he admits that it contains the signature of the Managing Partner of the company by name C.Vijayasekhar Reddy. It is also elicited from the evidence that the deceased was working since last three years prior to his death in the said company. To a suggestion that the deceased never worked in the Company was denied by him. From the evidence adduced, it is clear that the deceased was aged about 24 years at the time of the accident and was working in Vijaya Traders at Dhone.

Keeping in view the evidence of P.Ws.2 and 4 the question that arise for consideration is "What would be the income of the deceased per month?"

As admitted by P.W.2 no certificate is placed before this Court to show that the deceased has completed his B.Tech course in Mechanical Engineering, but, however he was working as a Mechanical Engineer in the above company. The said aspect is corroborated not only through the evidence of P.W.2 but also through P.W.4. It is also elicited from the evidence of P.W.4 that the deceased was working in their company since three years prior to the date of incident and that he was drawing Rs.4,000/- per month. But, however, the trial court took the monthly income of the deceased at Rs.2,500/- per month and deducted 1/3rd towards his personal expenses. The Apex Court in catena of cases held that when the deceased is a Bachelor, the amount to be deducted towards his personal and living expenses would be half of his salary and not 1/3rd as done in the present case. Since no appeal is filed by the Insurance Company questioning the said finding, it may not be proper on my part to upset the finding of deducting only 1/3rd towards personal and living expenses. Though no certificates are produced to show that he was a Mechanical Engineer by qualification, but P.W.4 in his cross-examination admits that the deceased was being paid Rs.2,500/- per month. Hence, the finding of the Tribunal in fixing the income of the deceased at Rs.2,500/- cannot be find fault with. However, the Tribunal failed to take into consideration the future prospects of the deceased. Since the deceased was aged about 24 years at the time of the accident, 50% of the income earned by the deceased as on the date of accident should be added to the income of the deceased for the purpose of calculating the loss of income. If 50% of Rs.2,500/- is added, the total income of the deceased per month would be Rs.3,750/-. If 1/3rd is deducted towards living and personal expenses, the contribution of the deceased to the family would be Rs.2,500/-. Therefore, the annual salary of the deceased would beRs.30,000/- (Rs.2,500 x 12 = 30,000/-).

A Three Judge Bench of the Apex Court in **Munna Lal Jain and another v. Vipin Kumar Sharma and others**[1] while dealing with the multiplier to be adopted in case of bachelor, held as under:

> "Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari and others V. Madan Mohan and another[2]. It was held that the multiplier is to be used with reference to the age of the deceased."

As the deceased was aged about 24 years the appropriate multiplier would be '18' as per the judgment of the Apex Court in ***Sarla Verma and others v. Delhi Transport Corporation and another***[3]. Applying multiplier '18' the total loss of dependency would be Rs.30,000/- x 18 = Rs.5,40,000/-. The tribunal also awarded a sum of

Rs.15,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.1,000/- towards transportation charges but the same appears to be on lower side. In view of the judgment of the Apex Court in ***Kishan Gopal and another V. Lala and others***[4] it would be appropriate to enhance the same to Rs.30,000/- under conventional heads. Thus, in all the claimants would be entitled to Rs.5,70,000/-.

In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[5], *the Apex Court while referring to* **Nagappa Vs. Gurudayal Singh**[6] held as under:

> "It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

In view of the Judgments of the Apex Court referred to above the claimants are entitled to claim more amount than what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

Coming to the quantum of compensation in M.V.O.P.No.261 of 2013, though no documentary evidence is produced to show the age of the deceased, but the Tribunal basing on the inquest and Post Mortem certificate, held that the deceased Nagaraju was aged about 25 years at the time of the accident. With regard to the income of the deceased, the claimants examined P.W.4 and got marked Exs.A-5 to A-7 and Ex.X-1. According to P.W.1 the deceased was working as Vibrator Roller Operator in M/s. Vijaya Traders and earning Rs.3,000/-

per month. There is no evidence with regard to profession and income of the deceased. Even P.W.4, who is an Accountant in the said firm, did not speak about the employment of Nagaraju and also the income earned by him. Hence, the Tribunal did not take into consideration the evidence of P.W.1 in fixing the income of the deceased. However, the Tribunal awarded only Rs.50,000/- under no fault liability, Rs.25,000/- towards loss of dependency, Rs.15,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.1,000/- towards transportation charges.

That being the position the question now would be “Whether the compensation to be awarded has to be determined by applying multiplier method or by awarding lumpsum as done by the Tribunal?”

The evidence of P.W.1 and also the averments in the claim petition clearly shows that all the three claimants were depending on the deceased. P.W.1, who is the brother of the deceased deposed that his brother(deceased) was working as Vibrator Roller Operator at M/s. Vijaya Traders and getting Rs.3,000/- per month as salary. His brother-in-law, who is the husband of the second petitioner, died about 10 years back and since then the second and third petitioners were living with the deceased, who was maintaining them. In view of the above, it is contended that since the three claimants are depending on him, the compensation has to be calculated basing on the multiplier system instead of awarding a lumpsum amount. On the other hand, the learned standing counsel for Insurance Company would contend that the petitioners are not the legal heirs of the deceased as such they are not entitled for any compensation except what has been awarded by the Tribunal. P.W.1 was cross-examined at length and it was suggested to P.W.1 that all the three claimants are not depending on the deceased and as such they are not entitled for any compensation, but the same was denied by him. It was also suggested to P.W.1 that the deceased was not working in M/s. Vijaya Traders and that he was not earning Rs.3,000/- per month which was denied. In order to answer the argument advanced by the counsel for the insurance company with regard to the claim made, it may be necessary to refer to Section 166 of the M.V.Act, which is as under :

166. Application for compensation:- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on or behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. From a perusal of Clause (c), it becomes clear that right is conferred upon the legal representatives to claim compensation, in case the victim of the accident died. The expression "legal representative" is in fact lesser in connotation and stringency than the expression "legal heir". Any person, who is a legal representative either by virtue of succession or through other means known to law, can be a legal representative and maintain the claim petition. The provision does not insist that a claimant under it must be dependant upon the deceased. That question becomes relevant in the context of apportionment of compensation. The question as to how the compensation is to be arrived and how it is to be distributed among the legal heirs or legal representatives, is a different aspect.

From a perusal of clause (1)(c) of 166, it is clear that right is conferred upon the legal representatives to claim compensation, in case the victim of the accident died. As held by this Court in **United India Insurance Co. Ltd., Hyderabad v. G.Satish Kumar and others**[7]**,** the expression “legal representative” is infact lesser in connotation and stringency than expression “legal heir”. It was held by the learned Single Judge of this Court that “any person who is a legal representative either by virtue of succession or through other means known to law, can be a legal representative and maintain claim petition. The Court also held that the provision does not insist that a claimant under it must be dependant upon the deceased. That question becomes relevant in the context of apportionment of compensation."

Similar issue came up for consideration in **Montford Brothers of St. Gabriel and another v. United India Insurance and another etc.**[8] Dealing with the said aspect, a three Judges Bench of the Apex Court held that in case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. The issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other depending upon the facts of a particular case. But as a legal proposition it is undeniable that a person claiming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

In the instant case, the claimants who have filed the application are the brother, sister and daughter of the sister. No contra evidence was adduced to show that these three claimants have nothing to do with the family of the deceased except suggesting to P.W.1, which was denied by him. In fact the finding of the Tribunal is also to the effect that these three claimants are related to the deceased. In fact the trial court categorically held that nothing has been elicited which is against the evidence of P.W.1. It has also been held by the Tribunal that if the claimants were doing some jobs, the second respondent could have placed sufficient evidence by examining some independent evidence, but the same was not done. Therefore, the Tribunal drew an adverse inference against the Insurance Company. Having held so, the Tribunal did not adopt any multiplier to calculate the quantum of compensation. Further, the Tribunal held that when the first petitioner, who is the brother of the deceased, is not totally capacitated to do any job for remuneration in future. It is to be implied that he would have been doing some job for his livelihood after the demise of the deceased. It is also held that the third claimant would depend on the deceased only till her marriage and therefore the question of paying compensation to her is limited to that extent only. In view of the above, the Tribunal held that there is no point in adopting the multiplier method for paying compensation to the petitioners. I am afraid the said approach cannot be accepted. As stated above, the Tribunal refused to adopt the multiplier method for calculating the loss of income on the basis that there is every possibility of first claimant doing the job after demise of the deceased and that the third claimant getting married and leaving the company. Having come to the conclusion that these three claimants are the legal representatives of the deceased and there being no evidence to show that they were gainfully employed, the Tribunal ought to have adopted the multiplier method for calculating the quantum of compensation rather than imagining the status of the family after the death of the deceased. Hence, the finding of the Tribunal on that aspect needs to be set-aside. The deceased being an able bodied person and aged about 25 years, it would be appropriate to fix the income of the deceased at Rs.1,500/- per month as held by the Tribunal. Since the deceased was aged about 25 years at the time of the accident 50% of the income earned by the deceased as on the date of accident should be added to the income of the deceased for the purpose of calculating the loss of income. If 50% of Rs.1,500/- is added, the total income of the deceased per month would be Rs.2,250/-. Since the deceased was a bachelor and if half of the amount is deducted towards living and personal expenses in view of the judgment of the Apex Court in Sarla Verma (3 supra), the contribution of the deceased to the claimants would be Rs.1,125/-. Therefore, the annual salary of the deceased would be Rs.13,500/- (Rs.1,125 x 12 = 13,500/-).

The Apex Court in **Munna Lal Jain and another v. Vipin Kumar Sharma and others (1 supra)**, took the age of the deceased for adopting the multiplier. When the age of the deceased was about 25 years, the appropriate multiplier would be '18' as per the judgment of the Apex Court in ***Sarla Verma case (3 supra).*** Applying multiplier '18' the total loss of dependency would be Rs.13,500/- x 18 = Rs.2,43,000/- Apart from that the claimants are also entitled Rs.30,000/- towards conventional heads in view of the judgment of the Apex Court in ***Kishan Gopal case (4 supra) .*** Thus, in all the claimants entitled to Rs.2,73,000/-.

Accordingly, M.A.C.M.A.No.427 of 2009 is allowed by enhancing the compensation from Rs.3,18,500/- to Rs.5,70,000/-, whereas M.A.C.M.A.No.4964 of 2008 is allowed in part by enhancing the compensation from Rs.93,500/- to Rs.2,73,000/-. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realisation. The enhanced amount in M.A.C.M.A.No.4964 of 2008 shall be apportioned in the manner directed by the Tribunal.

The enhanced amount shall be paid to the claimants in M.V.O.P. No.262 of 2003 subject to payment of deficit court fee, if any. There shall be no order as to costs. There shall be no order as to costs. The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

Date: 09.09.2015.

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[1] 2015(4) ALD 114

[2] (2013) 9 SCC 65

[3] 2009 (3) ALD 83 (SC)

[4] 2014 (1) An.W.R. 58 (SC)

[5] (2011) 10 SCC 756

[6] 2003 ACJ 12 (SC)

[7] 2012(3) ALD 226

[8] 2014(3) ALD 141(SC)