HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA
M.A. C.M.A. No.1338 OF 2015

(C.M.A. (S.R.) No.11865 OF 2015)

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

Aggrieved by the award of Rs.41,60,480/- towards compensation in O.P. No.132 of 2012, by the order, dated 18-07-2014, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - XXVII Additional Chief Judge, City Civil Court, Secunderabad (Tribunal), as against the claim of Rs.35.00 lakhs, laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), respondent No.2 therein - L&T General Insurance Company Limited, preferred the instant appeal.

2. Appellant, which is insurer of the lorry bearing No.AP-15-TB-2190 that involved in the accident, is respondent No.2 in the above O.P. before the Tribunal, while respondent Nos.1 to 3, who are wife and children, respectively, of Siddam Rajaiah, who died in the accident, are petitioners (claimants), and respondent No.4 - Sri Venkateshwara Lorry Transport, which is owner of the above lorry, is respondent No.1.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts in nutshell are that while Siddam Rajaiah along with petitioner No.3 was proceeding to Thandur from Bellampally, on motorcycle bearing No.AP-15-AD-2741, near Boyapally petrol bunk, a lorry bearing No.AP-15-TB-2190 driven at high speed in a rash and negligent manner, hit the motorcycle, due to which, both of them fell down and sustained injuries and Rajaiah succumbed to injuries while undergoing treatment in the Government Hospital, Bellampally. The Station House Officer, Thandur, Adilabad District, registered a case in Crime No.107 of 2011 against the driver of the lorry for the offence punishable under Section 304-A of the Indian Penal Code, 1860.

(b) The petitioners projecting that Rajaiah, who is hereinafter referred to as 'deceased', was 37 years old at the time of accident and by working as Coal Filler in Singareni Collieries Company Limited at GDK-9 INC, drawing a monthly salary of Rs.35,524/- per month, sought to award a sum of Rs.35.00 lakhs towards compensation against respondent Nos.1 and 2, owner and insurer, respectively, of the lorry involved in the accident.

5. Before the Tribunal, respondent No.1, owner of the lorry, remained *ex parte.*

6. Respondent No.2 filed its counter opposing the claim by raising various pleas.

7. Based on the rival pleadings, the Tribunal framed the following three (3) issues for consideration:

> "1. Whether the pleaded accident occurred resulting in death of the deceased due to rash and negligent driving of vehicle i.e., lorry bearing No.AP 15TB 2190 by its driver?
>
> 2. Whether the petitioner is entitled to any compensation and If so, at what quantum and what is the liability of the respondents?
>
> 3. To what relief?"

8. During enquiry, petitioner No.1, wife of the deceased, besides examining herself as PW.1, has examined one Burugu Srinivas, an eyewitness to the occurrence, as PW.2 and one C.V.V.S. Murthy, Senior Personal Officer, Singareni Collieries Company Limited, in which company the deceased was said to be working at the relevant time, as PW.3 and marked Exs.A-1 to A-13 besides getting marked Exs.C-1 to C-5 to substantiate their claim. On behalf of respondent No.2, no witnesses were examined, but photostat copy of the insurance policy of the lorry is marked as Ex.B-1 on consent.

9. The Tribunal, on appraisal of evidence of PW.2 supported by Exs.A-1, A-2, A-5 and A-7, which are certified copies of First Information Report, Charge sheet, scene of occurrence sketch and Motor Vehicle Inspector's report, respectively, held issue No.1 in favour of the petitioners.

(b) On issue No.2, fixing monthly salary of the deceased at Rs.32,754/- or Rs.3,93,048/- per annum and his age at 37 years on the date of accident, since date of birth of the deceased was shown as 21-05-1975 in Ex.C-1, pay revision notional salary particulars, and after deducting 1/3rd i.e., Rs.1,31,016/- (Rs.3,93,048/- x 1/3) therefrom towards his personal expenses, arrived at Rs.2,62,032/- per annum towards his contribution to the family and by applying multiplier '15', determined the loss of dependency at Rs.39,30,480/-. Besides the same, the Tribunal has grated Rs.1,00,000/- towards loss of consortium to petitioner No.1, Rs.1,00,000/- towards loss of love and affection and guidance to each of the minors, Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transport, making a total compensation of Rs.41,60,480/- and granted the same with interest at 7.5% per annum from the date of petition till realization.

10. It is the aforesaid order, which is under challenge in the instant appeal mainly on the ground that

the Tribunal granted higher compensation without properly appreciating the evidence on record. It is also stated that the Tribunal, somehow, overlooked the fact that the deceased contributed to the accident as it was a head on collision between two vehicles as held by this Court in **Agnuru Jaya Ramulu v. Md. Afzal Miyan and another**[1]**.** It is also stated that the Tribunal was wrong in taking monthly salary of the deceased at Rs.32,754/- while estimating the future loss of earnings. The Tribunal failed to appreciate that the salary slip, Ex.A-10 shows salary particulars of the deceased as Rs.10,444-07 paise for the month of October 2011 for 11 days only and the remaining amount of Rs.25,000/- was advance made towards 'Sakala Janula Samme' (strike), which cannot be construed as an integral part of the salary, as admitted by the Senior Personal Officer of the Singareni Collieries Company Limited, who was examined as PW.3. It is also stated that the deceased was coolie, working as General Mazdoor and not a full time regular employee and his salary was made depending upon the number of days he worked and he was paid Rs.13,459-21 paise for 19 days in July 2011, Rs.16,237/- for 23 days in August 2011, Rs.12,101/- for 17 days in September 2011 and Rs.10,444-07 paise for 11 days in October 2011, as admitted by PW.3 and, therefore, the Tribunal was wrong in fixing monthly salary of the deceased at Rs.32,754/-

placing reliance on Ex.A-10 salary slip. It is further stated that the Tribunal ought to have taken net salary of the deceased at Rs.20,562/-, as admitted by PW.3 in his cross-examination. It is also stated that the Tribunal ought to have deducted income tax while estimating the future loss of income since Ex.A-10 reveals deduction of income tax, as admitted by PW.3 basing on the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[2].

It is further stated that the Tribunal ought to have deducted Rs.1,413/- which was being received by petitioner No.1, wife of the deceased, towards pension amount. It is further stated that without there being any application seeking enhancement of the claim, the Tribunal ought not to have granted Rs.41,60,480/-, when the very claim itself was for Rs.35.00 lakhs. Even concerning interest, it is stated that the Tribunal failed to follow the decision in **Sarla Verma's Case** (Supra 2) in awarding the same at 7.5% per annum instead of 6% per annum, and, thus, sought to dismiss the appeal.

11. Heard Sri T. Mahender Rao, learned counsel for respondent No.2 (appellant), and Sri S. Sudarshan Reddy, learned counsel for the claimants (respondent Nos.1 to3).

12. Respondent No.4, owner of the lorry that involved in the accident, remained unserved. Since he suffered decree, his absence would not make any difference in

adjudicating upon the controversy herein.

13. Learned counsel for respondent No.2 (appellant), contends that the Tribunal has not properly appreciated the evidence on record and recorded an incorrect finding that the accident had occurred due to rash and negligent driving of the driver of the lorry. According to him, it is a direct collision and, therefore, it has to be construed that the deceased had contributed to the accident. To support the said argument, he has placed reliance on the decision of this Court in **Jaya Ramulus's Case** (Supra 1).

14. The points that arise for consideration are;

1. Whether the deceased had contributed to the accident as contended by respondent No.2 (appellant)?

2. Whether the order and decree under challenge cannot be sustained?

3. Whether the rate of interest at 7.5% per annum granted by the Tribunal requires modification?

POINT No.1:

15. It is no doubt true, no person connected with the charge sheet or the scene of occurrence sketch is examined by the petitioners. But, we would like to mention that a cursory glance at Ex.A-5, which is scene of

occurrence sketch, would show that the accident has taken place on the left half portion of the road leading from Bellampally to Thandur. The accident spot is clearly pointed out in the sketch marked as Ex.A-5. Thus, it is crystal clear that the deceased was riding his motorcycle on the left portion of the road leading from Bellampally to Thandur. Even the sketch would show that when the Investigating officer observed it and drawn rough sketch, the motor cycle was found lying on the right half side of the road, which gives rise to an inescapable inference that the lorry was driven at fast speed and dashed the motorcycle, due to which impact, the motorcycle turned around and found lying in the right side margin of the road, whereas the lorry crossed the road margin itself on the left side and alighted outside the road margin. Therefore, it cannot be construed that there was direct collision to view that the deceased contributed to the accident. In our view, mere non-examination of the Investigating Officer to explain the situation as shown in Ex.A-5 sketch cannot be a ground to view that the deceased contributed to the accident. Therefore, we are in agreement with the Tribunal on recording the finding on issue No.1 that due to rash and negligent driving of the driver of the lorry, the accident had occurred resulting in death of the deceased. Accordingly, point No.1 is answered.

POINT No.2:

16. Turning to determination of compensation by the Tribunal, as mentioned above, the Tribunal has taken the contents of Ex.C-1, which consist details of pay revision notional particulars of the deceased, further showing that the deceased was working as General Mazdoor and falls in the revised scale with effect from

01-07-2011. As per the details, gross salary is shown as Rs.26,658-42 paise with deductions of Rs.6,096/-. Date of birth of the deceased is shown as 21-05-1975 and date of retirement as 21-05-2035.

The Tribunal, by observing that the reliable documents in the nature of salary certificate and terminal benefits etc., reveal monthly salary of the deceased as Rs.32,754/- (as per Ex.C-1), fixed monthly income of the deceased at Rs.32,754/- and computed annual income at Rs.3,93,048/- and after deducting 1/3rd therefrom, arrived at Rs.2,62,032/- towards contribution to the family and by applying multiplier '15', worked out the loss of dependency at Rs.39,30,480/-.

17. Learned counsel for the insurer would submit that the Tribunal completely went wrong in considering the amount mentioned in Ex.A-10 and so also the amount mentioned in Ex.C-1. According to him, Ex.A-10 reflects total earnings of the deceased for the month of October 2011 at Rs.35,524-75 paise, but it is clear that an amount of Rs.25,000/- was included in that amount towards advance

made towards ‘Sakala Janula Samme’ (Strike), which amount ought not to have taken for computing the monthly income. The relevant details as to the monthly earnings during certain months relating to the deceased were already mentioned in the grounds referred to in the above, which were reiterated by the learned counsel. However, during the course of arguments, learned counsel fairly concedes that only statutory deductions, which are not repayable, have to be deducted from the gross salary and the remainder requires to be taken for fixing monthly earnings. Though, the learned counsel referred to the evidence of PW.3, nothing is brought out in his cross-examination to indicate whether the deceased was an income tax assessee. However, it has come up in the evidence of PW.3 that the deceased was assigned PAN (Permanent Account Number) number.

18. We have gone through the evidence of PW.3. When he was pursued in his cross-examination, he answers that the company deducts income tax from the salary of the employee and credits it to the respective accounts with their PAN and stated that PAN number of the deceased as ‘AYJPS9904N’. It is no doubt true, he admits to yet another question that tax would be deducted as per income tax rules, but, what can be gathered from the answers given by him is that the company was deducting income tax at source level.

19. We find from the evidence of PW.3 that an amount

of Rs.16,237/- was paid for the month of August, 2011 and the salaries drawn by the deceased, spoken to in his cross-examination were with reference to the period prior to pay revision and the pay revision was with effect from July, 2011. It is also forthcoming from his evidence that attendance and annual bonus have to be included to the monthly salary. His evidence indicates definite amounts towards these two components. Turning to Ex.A-10, salary was shown as Rs.35,524-75 paise. Admittedly, it includes Rs.25,000/- towards advance of Sakala Janula Samme (strike), whereas a sum of Rs.10,444-07 paise was show as salary for eleven days, during which period deceased worked. We have no reason to reject the details mentioned in Ex.C-1 for the reason that, that was the salary, which the deceased would have drawn from the month of July 2011, but, since revision of pay scales was notified at a later date by giving effect from the month of July 2011, the details as shown in Ex.C-1 have to be taken into consideration in determining the compensation. Ex.C-1 shows gross salary of the deceased as Rs.26,658-42 paise. In Ex.A-10, an amount of Rs.237/- was shown to be deducted towards deduction of income tax. Even if that amount is deducted from the monthly earnings of the deceased or even 50% more than that amount, since there was pay revision from July 2011, as no other statutory deductions are to be found in Ex.C-1, even considering Rs.26,000/- as monthly earnings, deducting 1/3rd therefrom, taking the remainder for working out the loss of dependency, and applying multiplier

‘15’, the amount that has to be determined towards loss of dependency would be around

Rs.30.00 lakhs, even excluding the conventional sum. In view of the decision in **Sarla Verma’s Case** (Supra 2), the petitioners are entitled to 50% of the compensation determined towards loss of compensation additionally towards future prospects. In fact, learned counsel for the appellant has placed reliance on **Sarla Verma’s Case** (Supra 2). Concerning future prospects, we would like to reproduce the principle laid down by the Apex Court in **Sarla Verma’s Case** (Supra 2) in paragraph No.11, thus:

> “11. In *Susamma Thomas,* 1994 ACJ 1 (SC), this court increased the income by nearly 100 per cent, in *Sarla Dixit,* 1996 ACJ 581 (SC), the income was increased only by 50 per cent and in *Arati Bezbaruah,* 2003 ACJ 680 (SC), the income was increased by a mere 7 per cent. In view of imponderables and uncertainities, we are in favour of adopting as a rule of thumb, an addition of 50 per cent of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’]. The addition should be only 30 per cent if the age of the deceased was 40 to 50 years. There should be no addition where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed

> salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

20. Thus, when viewed in the light of the principles laid down by the Hon'ble Apex Court in **Sarla Verma's Case** (Supra 2) and as re-emphasised by the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[3], the compensation of Rs.41,60,480/- granted by the Tribunal is just and adequate. Point No.2 is, accordingly, answered.

POINT No.3:

21. The Tribunal granted rate of interest at 7.5% per annum, which according to the appellant is on higherside, when viewed in the context of award of interest at 6% per annum by the Hon'ble Apex Court in **Sarla Verma's Case** (Supra 2). Awarding interest at the rate of 7.5% per annum by the Tribunal cannot be faulted with, since in **Rajesh's Case** (Supra 3), the Hon'ble Apex Court awarded interest at 7.5% per annum on the compensation granted. Accordingly, point No.3 is answered.

22. Hence, in our considered view, the findings recorded by the Tribunal both in regard to rash and negligent driving of the driver of the lorry and in determining compensation, since do not suffer from any legal infirmity,

we are not inclined to interfere with the same. Thus, we find no merit in the appeal.

23. Therefore, the Civil Miscellaneous Appeal is dismissed confirming the impugned order in all respects, at the admission stage itself. There shall be no order as to costs.

24. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

July 13, 2015.
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[1] **(2006 ACJ 855)**

[2] **(2009) 6 SCC 121**

[3] **2013ACJ1403 = 2013(4)ALT35**