HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.69 OF 2013
AND
CROSS OBJECTION (SR) No.14336 OF 2013

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

Respondent No.2 - Oriental Insurance Company Limited in Original Petition No.1261 of 2004, preferred the instant Civil Miscellaneous Appeal, aggrieved by the award, dated 31-10-2006, passed by the learned V Additional Metropolitan Sessions Judge (Mahila Court) - cum - XIX Additional Chief Judge, City Criminal Courts, Hyderabad (for short 'the Tribunal'), on the ground that the Tribunal has granted excess compensation.

2. Respondent Nos.1 to 3 - Petitioners have initially filed the appeal - MACMA, and while it was at S.R. stage in S.R. No.14336 of 2013, the same is converted into Cross-Objection with the same
S.R. number, seeking enhancement of compensation.

3. The appellant herein is respondent No.2 in original petition before the Tribunal, while respondent Nos.1 to 3 are petitioners and respondent Nos.4 to 6 are respondent Nos.1, 3 and 4, respectively.

4. For the sake of convenience, the parties are

hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

5. The petitioners being the wife, son and daughter laid the claim under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation of Rs.40,00,000/- (Rupees forty lakhs only) for the death of the husband of petitioner No.1 which occurred on
27-03-2003. Respondent Nos.3 and 4 are the parents of the deceased. The Tribunal has granted a total sum of Rs.29,15,000/-(Rupees twenty nine lakhs and fifteen thousand only) with interest at the rate of
7% per annum from the date of petition till realization, by apportioning the said amount towards the shares of petitioner Nos.1 to 3 and respondent Nos.3 and 4.

6. Turning to the facts, the husband of petitioner No.1,
K. Rama Koteshwar Rao, was working as an Assistant Manager (II) in Syndicate Bank 59, Shakuntala Apartments, Nehru Place, New Delhi. On 27-03-2003 at about 8.35 P.M., while he was crossing the road on foot at Wellington Crescent Road, opposite Gate No.31 of Rashtrapathi Bhavan, near Bus Stop, New Delhi, a Maruthi Zen Car VX bearing registration No.DL-4CH-3227 came from Ram Manohar Lohia Hospital driven by its

driver in a rash and negligent manner and hit him resulting in his sustaining severe injuries. He was shifted to Ram Manohar Lohia Hospital by passersby, but he was declared dead by the doctor who examined him.

i) The petitioners, stating that the deceased - K. Rama Koteshwar Rao, was working as an Assistant Manager (II) in Syndicate Bank; drawing a monthly salary of Rs.20,311/- and contributing the same to the family; and petitioner Nos.2 and 3 are pursuing their studies, sought the aforesaid amount towards compensation against respondent Nos.1 and 2 being the owner and insurer of Maruthi Zen Car.

7. Respondent No.1, owner of the accident vehicle, remained *ex parte* before the Tribunal.

8. Respondent No.2 filed counter opposing the claim. It attributed negligence to the deceased himself and raised various other pleas which are general in nature.

9. Respondent Nos.3 and 4 filed their counter seeking to fix their share in the compensation amount on the ground that they were dependants on the deceased and that respondent No.3 underwent a kidney surgery and expended huge amount for meeting the medical expenses.

10. The Tribunal has framed five (5) issues about the responsibility for the accident.

11. During the course of inquiry, petitioner No.1 examined herself as PW.1, besides examining an eye-witness as PW.3 and the Senior Manager, Syndicate Bank, Regional Office, Somajiguda, Hyderabad, as PW.2 to prove monthly salary drawn by the deceased at the relevant time, and also exhibited Exs.A-1 to A-79. On behalf of respondent No.2, no witnesses were examined and no documents were marked.

12. On issue No.1, the Tribunal having analyzed the evidence of PW.3 and the contents of Exs.A-1 to A-4, which are certified copies of First Information Report; Inner case diary; receipt of handing over dead body; and statement of complainant, and also Exs.A-5 to A9, which are medico legal case; certified copy of postmortem examination report; certified copy of death report and certified copy of Motor Vehicles Inspector's Report; and certified copy of charge sheet, held that due to rash and negligent driving of the driver of the Maruthi Zen Car, the accident had occurred and, thus, held issue No.1 in favour of the petitioners.

13. On issue No.2, as to whether there has been valid coverage of insurance policy for the accident

vehicle, since no evidence was adduced by respondent No.2, held it in favour of the petitioners.

14. On issue No.3, as to whether there was any violation of the terms and conditions of policy, since no evidence was let in by respondent No.2 - Insurance Company, held it in favour of the petitioners.

15. On issue No.4 which relates to determination of compensation, the Tribunal relying on the evidence of PW.2, the Senior Manager, Syndicate Bank, Regional Office, Somajiguda, Hyderabad and basing on Exs.A-60, A-61, A-77 and A-78, observing that he would have reached the level of drawing a salary of Rs.23,520/- plus Dearness Allowance at 21.06%, and by the date of his retirement, he would have reached the level of about Rs.29,000/-, fixed the salary of the deceased at Rs.30,000/- per month taking into consideration the future prospects even, and deducted 1/3rd there-from towards personal expenses of the deceased, and arrived at Rs.20,000/- towards contribution to the family or Rs.2,40,000/- per annum. The Tribunal taken the age of the deceased as 45 years basing on the entries in Ex.A-70 and applied multiplier '12' basing on the Second Schedule to Section 163-A of the Act and, thus, arrived Rs.28,80,000/- towards loss of dependency. Besides the said amount, the Tribunal also granted Rs.15,000/-

towards loss of consortium, Rs.5,000/- each to the petitioner Nos.2 and 3 and respondent Nos.3 and 4 under the head of loss of love and affection and, thus, determined a sum of Rs.29,15,000/- towards compensation with interest at 7% per annum and apportioning a sum of Rs.10,15,000/- towards the share of petitioner No.1; Rs.7,00,000/- each towards the shares of petitioner Nos.2 and 3 respectively, and Rs.2,00,000/- each towards the shares of respondent Nos.3 and 4, respectively.

16. It is the aforesaid order which is under challenge in the instant appeal preferred by the Insurance Company contending in the grounds, that the Tribunal has not properly appreciated the evidence on record and ought to have appreciated that every officer of the bank would not be reaching the level of Scale III Officer, promotions in banking industry in India are not time scale promotions and promotion of Officer to Scale III is subjected to several factors, particularly, his performance while heading a particular branch as a Branch Manager, besides merit, excellence and good business to the bank in the light of competition from private banks.

i) It is also stated that multiplier as per the Second Schedule to Section 163-A of the Act cannot be made applicable for the claim of the petitioners in the O.P. in view of the decision of the Hon'ble Supreme Court in 2004 ACJ 934 and in view of the principle that the Second Schedule is applicable only in respect of those category of cases where the income of the deceased/injured is not more than Rs.40,000/- per annum.

ii) It is also stated that the Tribunal went wrong in fixing monthly salary of the deceased at Rs.30,000/-, more particularly, when the evidence of PW.2 is not clinching and categorical.

iii) Claiming that the compensation granted by the Tribunal is excessive, sought to set aside the award and decree passed by the Tribunal.

17. Respondent Nos.1 to 3, who are petitioners in the OP, have filed cross-objection stating that the Tribunal omitted to consider the future prospects at 30% on the income of the deceased and increments in salary including gratuity, family pension etc.

i) It is also stated that the deceased was entitled to other allowances, like House Rent Allowance, Medical Aid, Petrol Expenses etc. as shown in Ex.A-60 and deposed by PWs.2 and 3, but the Tribunal sidelined the same, and somehow, concluded that the monthly income of the deceased drawing House Rent Allowance at

Rs.4,000/- per month, Medical Aid at Rs.185/- per month and Petrol Expenses at Rs.1,000/- per month, and put together worked out Rs.24,104/- per month, and instead of deducting 1/6th, has deducted 1/3rd towards personal expenses.

ii) It is also stated that proper multiplier is '15' and ought to have applied the same and ought to have granted the rate of interest at 18% per annum and, thus, sought to grant more than Rs.40.00 lakhs as compensation.

18. Heard Sri S. Agastya Sharma, learned counsel for the appellant – Insurance Company, Sri G.M. Mohiuddin, learned counsel for Respondent Nos.1 to 3, Sri P. Sajan Kumar, learned counsel for respondent No.4, and Sri K. Pandu Ranga Rao, learned counsel for respondent Nos.5 and 6.

19. Learned counsel for the appellant would submit that the Tribunal was not right in applying the multiplier provided in the Second Schedule to Section 163-A of the Act, and the Tribunal also went wrong in fixing the monthly salary of the deceased at Rs.30,000/- which runs contra to the evidence given by PW.2 by assuming that had the deceased been alive, he would have reached the Scale III Officers Post and would have drawn Rs.30,000/- per month towards his salary by the date of his retirement and, therefore, sought to set aside the award and decree

challenged herein.

20. Learned counsel for respondent Nos.1 to 3, who are petitioners, would submit that the gross salary of the deceased ought to have taken as Rs.24,603/- and towards future prospects 50% thereof ought to have taken basing on the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], and requests to deduct 1/4th of the salary towards personal expenses in view of the ratio laid down by the Hon'ble Supreme Court in the very same decision as the dependants are numbering '5' including the parents, who are shown as respondent Nos.5 and 6 herein and, thus, sought to determine the 'just' and 'adequate' compensation.

21. Learned counsel for respondent Nos.5 and 6 would submit that respondent Nos.1 to 3 and 5 & 6 herein are entitled to more than the claim made in view of the decisional law in **Sarla Verma's Case** (Supra 1) and **Rajesh and others v. Rajbir Singh and others**[2], as the Tribunal has not granted any amounts towards funeral expenses and loss of estate, and the amounts granted towards loss of love and affection and loss of consortium are very meager, and even the interest at 7% per annum granted by the Tribunal is very meager, and sought to

grant interest at 9% per annum and apportion the amount that would be enhanced to the petitioners and respondent Nos.3 and 4 in proportionate to the shares apportioned by the Tribunal.

22. Perused the evidence on record, both, oral and documentary let in by the petitioners.

23. The main challenge in this appeal is to the quantum of compensation determined by the Tribunal on the ground that excess compensation was granted. Whereas, in the cross-objection, the ground agitated for enhancement is, that in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma** (Supra 1) and **Rajesh (**Supra 2), the petitioners are entitled to compensation in excess of the claim made by them.

24. As seen from the evidence on record, more particularly, the evidence of PW.2, the deceased was drawing gross salary of Rs.18,918.94ps. The evidence of PW.2 also shows that the petitioners were entitled to D.A. at 21.06%. Concerning Quarter's Rent, Medical Aid and Conveyance Expenditure, there is no tangible evidence to substantiate the claim of the petitioners to grant Rs.4,000/- per month towards Quarter Rent; Rs.185/- towards medical aid per month and the amount equivalent to the value of 25 liters petrol etc.

25. Therefore, we are of the considered view to fix the monthly salary drawn by the deceased at Rs.22,902/- which includes Rs.3,984/- towards 21.06% D.A. It is not in dispute that petitioners Nos.1 to 3 and respondent Nos.3 and 4 are dependants on the deceased, and there is no challenge touching the finding recorded by the Tribunal on that aspect of the case. Thus, when construed that the dependants are numbering '5', as per the table formulated in **Sarla Verma's Case** (Supra 1), $1/4^{th}$ thereof has to be deducted towards personal expenses of the deceased which works out to Rs.5,725/-. When the same is deducted, the contribution to the family by the deceased works out to Rs.17,177/- per month [Rs.22,902 - Rs.5,725/-], or Rs.2,06,124/- per annum. The deceased was 45 years on the date of accident as per Ex.A-70. As per the decision in **Sarla Verma's Case** (Supra 1), the relevant multiplier is '14', and when the same is applied, the loss of dependency works out to Rs.28,85,736/-. Though, the Tribunal has taken the balance service of the deceased and the promotional aspects in considering the amount towards future prospects and taken the monthly earnings at Rs.30,000/-, but in view of the decisions in **Sarla Verma's Case** (Supra 1) and **Rajesh's Case** (Supra 2) for the age group between 40 - 50 years, 30% of the annual income has to be added additionally, which works out to Rs.8,65,721/-
[Rs.28,85,736 x 30%]. Thus, the petitioners are entitled

to Rs.37,51,457/- towards loss of dependency. Though, in the cross-objection, the petitioners claimed certain amounts towards loss of love and affection and conventional sums at enhanced rate, but we are of the considered view that a sum of Rs.50,000/- towards conventional sum can be awarded placing reliance on the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[3]. The accident has taken place at Delhi and the body of the deceased was brought to Hyderabad. Therefore, a sum of Rs.25,000/- is granted towards transport charges. Thus, the petitioners are entitled to a total sum of Rs.38,26,457/- as compensation. Out of the said compensation of Rs.38,26,457/-, a sum of Rs.14,26,457/- is apportioned to the share of petitioner No.1, Rs.9,00,000/- each towards the share of petitioner Nos.2 and 3, and Rs.3,00,000/- each towards the share of respondent Nos.3 and 4, respectively.

26. The Tribunal has granted interest at 7% per annum, but in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case (**Supra 2), the rate of interest is enhanced to 7.5% on the total sum of Rs.38,26,457/- from the date of petition till realization.

27. Accordingly, M.A.C.M.A. No.69 of 2013 is dismissed, and Cross-objection (SR) No.14336 of 2013 is

allowed in part to the extent indicated in the above. There shall be no order as to costs.

28. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal, stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

October 29, 2015.
Mgr

[1]. (2009) 6 SCC 121
[2]. 2013 ACJ 1403
[3]. 2014 ACJ 1430