THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.2752 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 18.01.1999 in OP.No.565 of 1995 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Nellore.

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). Be it noted that the 3rd respondent is added as a party to the claim petition of the claimants as per orders dated 10.10.1996 in IA.No.1398 of 1996. 2nd respondent is stated to be a formal party. This appeal against the 1st respondent/owner-cum-insured was dismissed for default. Even though the appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[1].

3. The case of the claimants and the facts leading to the filing of the present appeal, in brief, are as follows:

3.1 The 1st claimant is the wife, aged 30 years; the claimants 2 and 3 are the minor daughters, aged 12 and 14 years respectively; and, the 4th claimant is the mother, aged 55 years, of the deceased-Malakonda Reddy. The deceased used to carry on medical shop business and earn Rs.5,000/- per month. On 13.08.1995 at about 11:30 AM the deceased was proceeding on Scooter bearing no. AP 27/6496 from Tangutur to Kavali on G.N.T road. On the way, when the Scooter was proceeding at normal speed on that road, a lorry bearing registration no. AP 16/V 7456 which was going ahead of the Scooter and which was being driven at a high speed and in a rash and negligent manner by its driver was suddenly stopped without giving any caution and as a result the Scooter of the deceased, which was coming behind the lorry, dashed the lorry which was suddenly stopped. The deceased who had sustained serious grievous injuries in the accident had succumbed to the injuries while receiving treatment in the hospital. The deceased was the sole bread winner of the family. And the claimants have no other sources of income. The 1st claimant had lost her companion at an young age. The claimants 2 and 3 are students and their future and decent settlements in lives are shattered on account of the death of the deceased in the accident. Therefore, the claim petition is filed claiming a compensation of Rs.4 lakhs.

3.2 Before the Tribunal, the 1st respondent had filed a written statement admitting that she is the owner-cum-insured of the lorry involved in the accident but, had denied the manner of accident pleaded by the claimants. She had further stated in her counter that the lorry was insured with the 3rd respondent insurance company but, not with the 2nd respondent insurance company. The 2nd respondent insurance company filed a written statement stating that the said lorry was not insured with it. On impleadment of the 3rd respondent insurance company, it had filed a written statement denying the age, occupation and income of the deceased as well as the manner of accident and its liability to pay the compensation.

3.3 At trial, the 1st claimant and an eyewitness to the accident were examined as PWs1 and 2 and exhibits A1 to A8 were marked on the side of the claimants. No oral and documentary evidence was adduced on the side of the 3rd respondent insurance company. However, the Photostat copy of the insurance policy was exhibited as exhibit B1.

3.4 On merits, the Tribunal, while holding that the pleaded accident resulting in the death of the deceased had occurred due to the rash and negligent driving of the driver of the lorry bearing no. AP 16/V 7456, had awarded a compensation of Rs.2,07,000/- with interest and costs recoverable by the claimants jointly and severally from the respondents 1 and 3. The claimants, who are not satisfied with the said compensation amount awarded, had preferred this appeal.

4. The learned counsel for the claimants would contend as follows:

The Tribunal had erred in holding that the income of the deceased is not shown in exhibits A6 to A8 which are the receipts for payment of income tax. The Tribunal ought to have seen that the income of the deceased was shown respectively for the years 1992-93, 1993-94 and 1994-95 as Rs.3,500/-; Rs.3,700/- and Rs.4,200/- in column no.7 of the said exhibits A6 to A8. The Tribunal had erred in determining the income of the deceased at Rs.1,500/- per month. There is no basis for such determination. The Tribunal had erred in not taking into consideration the contents of the said exhibits. The Tribunal ought to have taken the annual income of the deceased as Rs.35,000/- in any view of the matter.

5. On the other hand, the learned counsel for the insurance company had contended that the Tribunal had accurately considered the facts and 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. POINTS:

7.1 As regards the occupation and income of the deceased, the case of the claimants is that the deceased used to do business in medicines by running a medical shop and earn Rs.5,000/- per month and contribute his earnings for the maintenance of the family and that the deceased was the only bread earner and that the income of the deceased is the only source of income for the family. PW1 deposed in line with her said pleadings and had exhibited, apart from other documents, exhibits A6 to A8, which are receipts for payment of income tax. She had admitted that she has not filed any documents to show that her husband is the proprietor of a medical shop and that her husband was earning Rs.5,000/- per month and that in exhibits A6 to A8, the total income of her husband was not shown. She had denied the suggestion that he was earning only Rs.1,500/- per month. PW2 is an eyewitness to the accident.

7.2 The only evidence in regard to the income of the deceased is in the form of exhibits A6 to A8, which are copies of form 4-A statements under simplified procedure for new tax payers. In the said documents, it was mentioned that the deceased was doing retail trade and that his deemed income from business or vocation is Rs.35,000/-, Rs.37,000/- and Rs.42,000/- respectively in the three financial years viz., 1992-93, 1993-94 and 1994-95 and that he had paid a tax of Rs.1,400/- each in the said three years on his incomes. The income mentioned in these documents is only a deemed income. If really the deceased was carrying on medical shop business, he must have had documentary evidence like bill books, account books, licenses and certificates issued by the Medical and Health Department besides other records like sales tax registration certificate and profession tax receipts etcetera. Not even the name of the medical shop was mentioned in the pleadings and no such record is produced. Though the claimants had an opportunity to adduce best evidence regarding the vocation and the income of the deceased, no such evidence was adduced. However, the accident in this case had occurred on 13.08.1995. Even in cases of labourers, the courts were fixing a minimum income of Rs.1,500/- to Rs.2,000/- per month. Therefore, it is reasonable to accept the annual income of deceased, who was carrying on a retail trade at Rs.20,000/- per annum. As per the pleadings and evidence and also as per post mortem certificate under exhibit A3, the age of the deceased was 38 years at the relevant time. As per the ratio in the decision in **Sarala Verma v. Delhi Transport Corporation and another**[2], the appropriate multiplier is '15' (fifteen). In the case of **Santosh Devi vs. National Insurance Company Limited and Others**[3], the Supreme Court held thus:

> **"Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarala Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."**

Considering the fact that the age of the deceased was below 40 years and following the ratios in the decisions in **Sarala Verma and Santosh Devi (2 and 3 supra) 5**0% has to be added to the actual income of the deceased towards future prospects. Therefore, the annual income of the deceased works out to Rs.30,000/- (Rs.20,000/- + Rs.10,000/-). As the number of dependant family members is 4, a 1/4th is to be deducted from the said amount towards personal and living expenses of the deceased. If so, deducted the annual contribution to the family works out to Rs.22,500/- [Rs.30,000/- (-) Rs.7,500/-). If the said multiplicand is multiplied by the multiplier '15' (fifteen), the annual loss of dependency works out to Rs.3,37,500/- (22,500/- x 15). Therefore, the compensation of Rs.3,37,500/-

is awarded to the claimants under the head 'loss of dependency'.

7.3 Coming to the amounts of compensation under the other heads, the Tribunal had awarded Rs.5,000/- to the 1st claimant towards loss of consortium and Rs.10,000/- towards loss of estate. 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 amounts awarded, by the Tribunal in the well considered view of this Court, are not in accordance with the ratios in the precedents. In the decision in **Anjani Singh and Ors. V. Salauddin & Ors**[4]**,** the Hon'ble Supreme Court by following the ratio in a three Judge Bench decision in **Rajesh and Ors. V. Rajbir Singh and Ors**[5] 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 [5 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', Rs.1,00,000/- towards 'loss of love and affection and career guidance to the minor claimants/unmarried daughters'. And, Rs.5,000/- each is further awarded under the two conventional heads 'loss of estate' and 'transport expenses'.

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

Sl. No.	**Head of compensation**	**Amount (in Rs.)**
(1)	**Loss of dependency**	**3,37,500-00**
(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		**5,72,500-00**

(Rupees Five Lakhs Seventy Two Thousand and Five Hundred only)

7.5 The claimants had claimed a compensation of Rs.4,00,000/-. The compensation as determined and awarded worked out to Rs.5,72,500/- which is more than the amount claimed by the claimants. In **Nagappa** v. **Gurudayal Singh and others**[6] the Supreme Court had 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 just, reasonable and fair compensation to which the claimants are entitled to is Rs.5,72,500/-. The enhanced compensation is Rs.3,65,500/. In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. The points are accordingly answered.

8. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award simple interest at the rate of 7.5% per annum from the date of the claim petition as per the ratio in the decision in **Mohinder Kaur and others v Hira Nand Sindhi**[7] . On the compensation already awarded, the trial Court had granted interest at 12% per annum simple.

9. In the result, the appeal is allowed with costs awarding a total compensation of Rs.5,72,500/- (Rupees Five Lakhs Seventy Two Thousand Five Hundred only). The enhanced compensation is apportioned as under: 'Rs.1,00,000/-(Rupees One Lakh only) to the 1st claimant/wife; Rs.1,00,000/- each (Rupees One Lakh only) to the claimants 2 and 3/daughters; and Rs.65,500/- (Rupees Sixty Five Thousand Five Hundred Only) to the 4th claimant/mother. Having regard to the facts and circumstances, the 3rd respondent/insurance company is directed to deposit before the Tribunal, within two months from the date of the receipt of a copy of this judgment, the enhanced portion of compensation i.e., Rs.3,65,500 (Rupees Three Lakhs Sixty Five Thousand and Five Hundred only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit. 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. The 4th claimant is permitted to withdraw her entire share with interest. The claimants 2 and 3, after getting themselves declared as majors as per procedure established by law, are permitted to withdraw their respective shares at the times of their respective marriages or by showing any valid reason for withdrawal to the satisfaction of the Tribunal. The Tribunal shall keep the balance compensation amounts of the claimants 1 to 3 in separate fixed deposits in their respective names in any Nationalised Bank till the release of the same to the respective claimants as per the above directions and/or norms applicable.

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

M. SEETHARAMA MURTI, J

19th June, 2015
Vjl

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[1] 2001(1) ALD 453 (DB)

[2] 2009 ACJ 1298

[3] 2012 ACJ 1428

[4] 2014 ACJ 1565 = 2014 (6) SCALE 55

[5] (2013) 9 SCC 54

[6] AIR 2003 SC 674

[7] (2015) 4 SCC 434