THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A.Nos.3598 of 2008 and 161 of 2009

COMMON JUDGMENT:

These two appeals are directed against the order dated 14.05.2007 passed in O.P.No.862 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, they are being disposed of by this common judgment.

M.A.C.M.A.No.3598 of 2008 is filed by the claimants in the above O.P. seeking enhancement of the compensation while M.A.C.M.A.No. 161 of 2009, is filed by the insurance company respondent No.2 in the above O.P.

Heard the learned counsel for the appellants, the learned counsel for the respondents and perused the material available on record.

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

The facts in issue are as under:

The claimants, who are the parents, wife and minor children of one Rajender Reddy (hereinafter referred to as "the deceased"), filed a petition under Section 166 (1) (c) of the Motor Vehicles Act, claiming compensation of Rs.20,00,000/- for the death of the deceased in a road accident that took place on 21.11.2003 at about 7.45 p.m. The averments in the petition would disclose that on the fateful day while the deceased was proceeding on his Scooter bearing No. AP-25/C-812 from Anthampally village towards Kamareddy side and when he reached Jangampally bus stand, a Tata Sumo bearing No. AP-09/W-9543 driven by its driver in a rash and negligent manner came from Kamareddy side and dashed against the scooter. As a result of which the deceased sustained multiple fractures and also a crush injury to skull, which lead to his instantaneous death. It is also stated that the deceased was aged about 30 years and was earning Rs.3.00 lakhs per annum on agriculture and business and was contributing his earnings for the welfare of the petitioners. Since the accident took place due to the negligence of the driver of the first respondent and the second respondent is insurer of the said vehicle both of them were jointly and severally made liable to pay the compensation.

The first respondent remained *ex parte.* The second respondent filed counter denying the manner in which the accident took place. The second respondent also disputed the age, income and avocation of the deceased. It is further stated that though the vehicle was insured with the second respondent, the liability of the insurance company is governed by the provisions of the M.V.Act, Rules, terms and conditions of the insurance policy, if there is any breach of conditions of the policy, the insurance company is not liable to pay any compensation. It is further denied that the driver of the vehicle was having valid driving licence and that he was authorized to drive the vehicle at the time of the accident. In any event it is stated that the compensation claimed by the claimants is highly excessive and exorbitant.

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

1) Whether the accident has taken place due to rash and negligent driving of vehicle bearing No. AP-09/W-9543 by

its driver?

2) Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?

3) To what relief?

In support of the case, the claimants examined PWs.1 to 3 and got marked Exs.A-1 to A-7. On behalf of the respondents, R.W.1 was examined and Exs.B1 to B3 marked.

After considering the oral and documentary evidence available on record, the Tribunal awarded compensation of Rs.6,32,000/-with proportionate costs and interest at 7.5% p.a. from the date of petition till the date of realization.

Learned counsel for the insurance company mainly submits that the insurance company is not liable to pay any compensation as the driver of the vehicle has no valid driving licence to drive the vehicle on the date of the accident. He further submits that absolutely there is no loss of income since the deceased was an agriculturist and the lands are intact; and the claimants are only entitled for supervisory charges. It is further contended that the wife of the deceased is also an earning member and the income of the wife should also be taken into consideration while calculating the loss of dependency.

Per contra, the learned counsel for the claimants submits that there is no material produced before the Court to show that the driver of the vehicle was not having driving licence. He further submits that even if loss towards supervisory charges were taken into consideration, the quantum of amount awarded is on lower side. He further submits that the income of the wife cannot be taken into consideration for calculating the loss of dependency.

As seen from the above, there is no dispute with regard to the manner in which the accident took place and the crime vehicle was insured with the second respondent. Therefore, it would not be necessary to go into the aspect as to whether the accident took place due to the rash and negligent driving of the driver of the first respondent or about the vehicle being insured with the second respondent-insurance company.

The next question that falls for consideration is whether the claimants are entitled to only supervisory charges and w*hether the compensation awarded by the Tribunal is just and reasonable.*

The Apex Court in ***State of Haryana and another v. Jasbir Kaur and others***[1] held as under:

> "As rightly contended by learned counsel for the appellants, there was not even any material adduced to show type of land which the deceased possessed. The matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered."

Similarly a Bench of this Court in ***Oriental Insurance Co. Ltd., Guntur v. P.Sathyavathamma and others***[2] held as under:

> "There is no dispute that when the deceased is an agriculturist owning agricultural land, the value of supervisory services have to be estimated and taken as basis for determining the loss of income. It is not permissible to say that no amount need be awarded towards the loss to the dependency merely because the

corpus of the agricultural land is left intact for the dependants. When in case of death of non-cultivators who have other properties, the properties remain intact and still damages are awarded, there is no reason why on death of cultivator who have agricultural land, a negative attitude should be taken. The general practice of making automatic deduction for the value of property inherited has fallen into desuetude. The value of the accelerated receipt of property cannot according to the Privy Council be treated as a total or partial equivalent of the loss to the dependency inasmuch as the said acceleration has to be set off against the loss of saving of the deceased to the family. At the extreme, it is equally not permissible to capitalize the income from the land by a number of years' purchase.

11. Learned Tribunal assessed the loss of supervisory charges on agriculture at Rs.50,000/-. To rebut such conclusion, Ex.A15 and oral evidence of PWs.3 and 5 was relied on. In addition to this, we have also perused the evidence of PWs.3 and 5. From this, it can be inferred that Jyothi Reddy was cultivating the land and he was producing mango and coconut saplings. By the very nature of work involved in this, more attention is required and if only a supervisory or farm servant had been engaged at relevant time, it would certainly be not less than Rs.50,000/-. Therefore, we do not find any strong reason to vary the loss of supervisory charges on agriculture due to demise of Jyothi Reddy."

It is to be noted that in both the cases referred to above, the extent of land in which the deceased was doing agricultural operations is not in dispute. On the other hand, in the case on hand, there is no material on record to show that the entire family of the deceased was having Ac.22.00 of land and in fact the deceased was only son to his parents and was looking after the agriculture work in the entire extent of Ac.22.00. Though there is no material on record to show the nature of crop that was raised by the deceased in the entire land, it should be noted that the deceased and his family members would not have kept the entire extent of land fallow. Since the entire family is depending on the income earned by the deceased through agriculture, a reasonable amount has to be taken towards loss of supervisory charges. Having regard to the circumstances stated above, the tribunal rightly fixed the income of the deceased at Rs.4,500/- per month but erred in not considering the future prospects.

Referring to the judgment of the Apex Court in ***Santosh devi v. National Insurance Company Limited and others***[3]***,*** a learned Single Judge of Delhi High Court in ***Royal Sundaram Alliance Insurance Co. Ltd., v. Anitha and others***[4] held as under:

> "Even if it is assumed that the deceased was doing agriculture, in the absence of any specific evidence with regard to the amount spent on agricultural operations and the net income after deducting the expenditure, the respondents were entitled to loss of dependency on account of supervisory services rendered by the deceased. In the absence of any evidence as to future prospects an addition of only 30% with regard to the future prospects can be made on the basis of the report of the Supreme Court in Santosh Devi Case (4 supra)."

From the judgment referred to above it is clear that the deceased who was doing agriculture would be entitled to an addition of 30% of his income to his income for computing the future prospects. After considering the evidence available on record, the Tribunal held that the deceased was aged about 32 years at the time of the accident. In view of the judgment of the Apex Court in Sarla Verma v. Delhi Transport Corporation[5] the suitable multiplier would be '16' and not '17' as adopted by the

Tribunal.

The learned counsel for the insurance company submits that since the wife of the deceased is also earning member, her income has to be taken into consideration while calculating the loss of dependency. I am afraid the said argument cannot be accepted in view of the judgment of this Court in ***R.Annapoorna and others v. Sharma Transports Bangalore and another***[6] wherein this Court held as under:

> "It may be noted that while awarding compensation under the provisions of the Act which is beneficial legislation, the economic status of the claimants or their other source of livelihood are not relevant for the purpose of awarding compensation towards loss of dependency. The quantum arrived at on the basis of the contribution that would be made by the deceased is not liable to be deducted on the grounds of the claimants own source of income or the status. Therefore, the claimants are entitled to the amount as calculated above without any deduction."

If the income of the deceased is fixed at Rs.4,500/- per month and if 30% of the income is added to the actual income of the deceased towards future prospects, the total income of the deceased would be Rs.5,850/- per month. Further the tribunal erred in deducting 1/3rd amount towards personal and living expenses. It is not in dispute that six persons are depending on the income of the deceased. In view of the judgment of the Apex Court in **Sarla Verma case (5 supra)** deduction to an extent of 1/4th has to be made towards personal and living expenses of the deceased. Deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.4,387/- per month and Rs.52,650/- per annum. Applying multiplier '16' the total loss of dependency would be Rs.52,650/- x

16 = Rs.8,42,400/-. The tribunal awarded a sum of Rs.5,000/- towards funeral expenses and transportation and Rs.15,000/- towards loss of consortium, but however failed to award any amount towards loss of love and affection and loss of estate. Taking into consideration the circumstances of the case and in view of the judgment of the Apex Court in ***Ramilaben Chinubhai Parmar Vs. National Insurance Company***[7] and ***Kishan Gopal and another V. Lala and others***[8], I deem it appropriate to award a sum of Rs.50,000/- under the conventional heads ie. towards loss of estate, loss of consortium and funeral expenses. Thus, in all the claimants are entitled to Rs.8,92,400/-.

In view of the above discussion, M.A.C.M.A.No.3598 of 2008 is allowed in part by enhancing the compensation from Rs.6,32,000/- to Rs.8,92,400/- while M.A.C.M.A.No.161 of 2009 is dismissed. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realisation. The claimants would be entitled to the compensation awarded only after payment of deficit court fee.

There shall be no order as to costs. The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

24.08.2015
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[1] (2003) 7 SCC 484

[2] 2010 (3) ALD 222 (DB)

[3] II (2012) ACC 377

[4] II (2013) ACC 261

[5] 2009 ACJ 1298 (SC)

[6] 2011 (2) ALD 732

[7] 2014 (4) SCC 67

[8] 2014 (1) An.W.R. 58 (SC)