THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No. 1486 of 2004

JUDGMENT:

This Civil Miscellaneous Appeal is preferred by the claimants aggrieved by the Award in O.P.No.1154 of 1999 dated 18.11.2003 passed by the Chairman MACT-cum-Principal District Judge, Nalgonda (for short "the Tribunal).

2) The claimants are the wife and mother of the deceased, who died in a motor vehicle accident that occurred on 06.10.1999 when the deceased was proceeding as a driver of an Ambassador Car bearing No.AP-16-T-7909, a lorry bearing No.AP-5X-4567 came in the opposite direction and dashed against the Ambassador Car causing his instantaneous death. The claimants filed O.P. against respondents 1 & 2, who are the owner and insurer of the offending lorry and also against respondents 3 & 4, who are the owner and insurer of the Ambassador Car and claimed Rs.2,50,000/- as compensation under different heads. The Tribunal after full fledged enquiry awarded Rs.2,29,000/- with proportionate costs and interest at 9% per annum.

Questioning the adequacy of compensation, the claimants filed the instant appeal.

3) Heard arguments of Sri K. Jagadishwar Reddy, learned counsel for appellants; Sri V.Venkatarami Reddy, learned counsel for respondent No.4/Insurance Company. Case against R.1 was dismissed for default vide Court Order dated 19.11.2015. Though Vakalat was filed on behalf of R.2

but there is no representation on its behalf. Notice to R.3 was served but there is no representation on his behalf.

4) The prime contention of the learned counsel for appellant is that the Tribunal grossly erred in fixing the income of the deceased as Rs.1500/- p.m inspite of the fact that the deceased was a car driver and earning Rs.2500/- p.m. Therefore, the Tribunal ought to have accepted the said amount. Further, the Tribunal failed to add future prospects to his earnings. He further argued that the Tribunal wrongly took '17' as multiplier. In view of deceased was aged about 25 years, it should have taken '18' as multiplier following the decision of Apex Court in ***Smt. Sarla Verma vs. Delhi Transport Corporation***[1]. Nextly, learned counsel argued that the Tribunal awarded meager amounts towards loss of consortium and loss of estate. He also argued that the Tribunal failed to award any compensation for loss of love and affection.

He thus prayed to allow the appeal and enhance the compensation suitably.

5) Per contra, learned counsel for 4th respondent argued that the compensation awarded under different heads was quite reasonable and there was no need to enhance the same. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the point for determination is:

"Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?"

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[1] 2009 ACJ 1298 (SC)

7) **<u>POINT</u>**: The accident, involvement of car bearing No.AP 16 T 7909 and lorry bearing No.AP 5 X 4567 are not in dispute. The dispute is with regard to the quantum of compensation. On a close scrutiny of the Award, I am of the view that the compensation awarded needs suitable enhancement. The deceased was a car driver and accident was occurred in the year 1999 and as such, the income of the deceased fixed by the lower Tribunal at Rs.1500/- p.m at that time, cannot be found fault. However, as rightly contended, the Tribunal has not taken into consideration the future prospects. In ***Santosh Devi vs. National Insurance Company Limited***[2], the Apex Court held that future prospects have to be added in respect of self-employed persons also. Going by it, 50% is added to the earnings of the deceased. Thus the monthly income of the deceased comes to Rs.2,250/- (Rs.1500/- x 50%). Then multiplier is concerned, the Tribunal considering that the deceased was in the age group of 20 to 25 years, fixed '17' as multiplier. However, in ***Sarla Verma***'s case (1 supra), the Apex Court fixed '18' as multiplier for the persons in the age group of 21 to 25 years. So '18' is accepted as multiplier. So the compensation for the loss of dependency works out to **Rs.3,24,000/-** (Rs.2,250/- x 12 x 18 x 2/3rd).

8) Then conventional amounts are concerned, the Tribunal has awarded Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. In the decision reported in ***Ramilaben Chinubhai Parmar vs. National Insurance Co.***[3], the Apex Court has awarded Rs.50,000/- for conventional amounts. Hence, following

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[2] 2012 ACJ 1428 (SC)
[3] 2014 ACJ 1430 SC

the said decision, compensation for aforesaid conventional items is enhanced to **Rs.50,000/-.**

Thus the total compensation payable to the claimants under different heads is detailed as below:

Loss of dependency	Rs. 3,24,000-00
Conventional items	Rs. 50,000-00
Total	Rs. 3,74,000-00

So the compensation is enhanced by **Rs.1,45,000/-** (Rs.3,74,000/- minus Rs.2,29,000/-).

9) It is seen that the compensation amount exceeds the claim of the claimants. However, in ***Nagappa vs. Gurudayal Singh and others***[4], the Apex Court held that in suitable cases, the Tribunals and Courts can award more compensation than claimed.

10) In the result, this appeal is allowed and ordered as follows:

(i) The compensation is enhanced by **Rs.1,45,000/-** (Rs.3,74,000/- minus Rs.2,29,000/-) with proportionate costs and interest at the rate of 9% p.a as awarded by the Tribunal from the date of O.P, till the date of filing the appeal and at the rate of 7.5% p.a from the date of appeal till the date of realisation against respondent Nos.1 to 3.

[4] 2003 ACJ 12 = AIR 2003 SC 674

(ii) The appellants shall pay additional Court fee on the enhanced compensation amount of Rs.1,24,000/-(Rs.3,74,000/- minus Rs.2,50,000/-) within One(1) month from the date of this judgment.

(iii) Respondent Nos.1 to 3 are directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.10.2016
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