HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1513 of 2009
AND
Cross-Objection (SR).No.36680 of 2009

COMMON JUDGMENT :

Aggrieved by the order and decree dated 15.03.2005, passed in O.P.No.312 of 2003 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Karimnagar District (for brevity "the Tribunal"), awarding a sum of Rs.2,54,000/- towards compensation, as against the claim of Rs.3,00,000/- made under Section 163(A) r/w. Section 166 (1)(c) of the Motor Vehicles Act, 1988 (for brevity "the Act"), for the death of the deceased – Jadi Srinivas, who died in a motor accident that occurred on 23.06.2002, at about 6-00 p.m., near the outskirts of Gajulapalli, Godavarikhani, while the appellant – New India Assurance Company Limited preferred Civil Miscellaneous Appeal, under Section 173 of the Act, mainly on the ground that the compensation awarded by the Tribunal was excessive and Arbitrary and that the Tribunal ought not to have taken earnings of the deceased as Rs.3,000/- per month, without there being any legally acceptable evidence on record; respondent Nos.1 and 2 – claim petitioners, who are the parents of the deceased – Jadi Srinivas, have preferred the Cross-objection, seeking enhancement of compensation with interest @ 24% per annum.

2. The appellant – insurer is respondent No.3, respondent Nos.1 and 2 herein are claim petitioners, respondent No.3 and 4 herein are driver and owner of the offending Jeep bearing No.AP 15T 2693, respectively, in O.P.No.312 of 2003. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.312 of 2003 before the Tribunal.

3. Since respondent No.3 – insurer challenged the quantum of compensation alone and there is no complaint as regards violation of the terms and conditions of the Insurance Policy, advertence to the fact-situation gets obviated.

4. Heard Sri C.V. Rajeeva Reddy, learned Standing Counsel for the appellant – insurer, and Sri M. Raja Malla Reddy, learned counsel for respondent Nos.1 and 2 – petitioners – Cross-objectors. Though respondent Nos.3 and 4 have entered appearance through a counsel, there is no representation on their behalf.

5. The Tribunal, while determining the compensation, taking the view that the deceased was aged 22 years old, at the time of accident, and actively participating in sports and other cultural activities in the college, basing on the National Service Scheme Certificate, Merit Certificate of Cultural Activities, and Merit Certificate in Sports, under Exs.P-8 to

P-10, respectively, and being a bright and intelligent student, he used to earn Rs.3,000/- per month, by undertaking tuitions to about 20 to 25 children, and after deducting 50% thereof towards personal living expenses, arrived at Rs.1,500/- per month or Rs.18,000/- per annum towards contribution to the family. Further, the Tribunal, by taking the age of the younger parent of the deceased, recording it as 45 years, applied the multiplier '13' and arrived at Rs.2,34,000/-, towards loss of dependency and life; besides awarded Rs.15,000/- towards compensation for mental agony, suffering and loss of love and affection; Rs.2,000/- towards funeral expenses; and Rs.2,500/- towards loss of estate, as per the entries in Schedule-II to Section 163-A of the Act. Thus, a total compensation of Rs.2,54,000/- was awarded with interest @ 9% per annum, with equal apportionment to both petitioner Nos.1 and 2.

6. The aforesaid order and decree are challenged by respondent No.3 – insurer, mainly contending that the Tribunal was wrong in arriving at the income of the deceased as Rs.3,000/- per month, without there being any documentary evidence from the side of the petitioners and, therefore, sought to either modify or set aside the order and decree passed by the Tribunal.

7. Learned counsel for the appellant – insurer would submit that since the deceased, being neither an employee

nor an earning member, the Tribunal was not right in fixing his earnings as Rs.3,000/- per month.

8. As regards the cross-objection filed by the petitioners seeking enhancement of compensation, learned counsel for the appellant – insurer would submit that the petitioners are not entitled to any amount, exceeding the amount claimed and, therefore, sought to reduce the amount of compensation awarded by the Tribunal.

9. *Per contra*, learned counsel for respondents – petitioners would submit that the law declared by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1] and **Rajesh and others v. Rajbir Singh and others**[2] is applicable to the fact-situation occurring in the instant case and, therefore, sought to modify the decree and award compensation, by taking the multiplier factor, which is applicable to the deceased, but not the multiplier factor applicable to his mother.

10. At the outset, it would be apt to refer to the legal principles laid down by the Hon'ble Supreme Court in **Ranjana Prakash v. Divisional Manager**[3], holding that the High Courts cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the

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1 (2009) 6 Supreme Court Cases 121
2 2013ACJ1403 = 2013(4)ALT35
3 (2011) 14 SCC 639

compensation nor can it reduce the compensation in appeal by the claimants seeking enhancement of compensation.

11. However, in the present case, since cross-objection are filed by the petitioners, certainly, the enhancement sought for by the petitioners can be accepted to, in case, on determination, the compensation that would be arrived at, even exceeds the claim made by the petitioners.

12. Turning to the determination of compensation, the age of the deceased being 22 years, as on the date of his death in the said accident, is not in dispute. So far as earnings of the deceased at Rs.3,000/- per month, as taken by the Tribunal, is concerned, the Tribunal recorded a finding, basing on Exs.A-8 to A-10, that the deceased – boy was bright and intelligent and capable of earning Rs.3,000/- by undertaking tuitions, which finding is basing on facts and well reasoned. Unless respondent No.3 – insurer is capable of showing that the said finding suffers from utter perversity, certainly, the same does not warrant any interference by this Court. Even, leaving apart the finding recorded by the Tribunal with regard to income of the deceased, the Hon'ble Supreme Court also laid down that even a coolie would be earning Rs.3,000/- per month, therefore, the finding recorded by the Tribunal as regards earnings of the deceased, certainly, cannot be upset.

13. The further question that arises for consideration is, whether the 'multiplier factor' that is applicable to the mother of the deceased or the deceased has to be taken?

14. It is also well settled, in view of the authoritative pronouncements of the Hon'ble Supreme Court in **Sarla Verma's** case (1 supra)**, Amrit Bhanu Shali and others v. National Insurance Co. Ltd. and others[4],** and **Munna Lal Jain and others v. Vipin Kumar Sharma and others[5]**., the age of the deceased has to be reckoned for applying the relevant multiplier factor, but not the age of the younger parent of the deceased, where the deceased died in an unmarried status. Therefore, the appropriate multiplier factor would be '18', as the deceased was aged 22 years old, as per the entries recorded in the table formulated by the Hon'ble Supreme Court in **Sarla Verma's** case (1 supra). Thus, when Rs.3,000/- per month is taken as earnings of the deceased, after deducting 50% thereof towards personal living expenses of the deceased, which the Tribunal rightly did so, his contribution to the family would workout to Rs.1,500/- per month or Rs.18,000/- per annum, and when the multiplier '18' is applied, the loss of dependency or contribution to the family, as the case may be, would work out to Rs.3,24,000/- (Rs.18,000/- x 18 = 3,24,000/-). This apart, the amounts of Rs.15,000/- towards compensation for mental agony,

[4] 2012(6) SCALE
[5] (2013) 6 SCC 347

suffering and loss of love and affection; Rs.2,000/- towards funeral expenses; and Rs.2,500/- towards loss of estate, granted by the Tribunal are maintained. Thus, the petitioners are entitled to a total compensation of Rs.3,43,500/- (Rs.3,24,000/- + Rs.15,000/- + Rs.2,000/- + Rs.2,500/- = Rs.3,43,500/-).

15. The claim made by the petitioners – cross-objectors was for Rs.3,00,000/-. The amount of compensation now arrived, on determination, certainly, exceeds the compensation claimed in the petition. However, there cannot be any embargo to grant excess amount of compensation, in view of the fact that the petitioners have preferred cross-objection and, therefore, the order and decree are modified, granting compensation of Rs.3,43,500/- as against the sum of Rs.2,54,000/- awarded by the Tribunal.

16. Turning to whether the compensation exceeding the claim can be awarded, it is well settled that the Courts are empowered to grant compensation exceeding the amount claimed while determining just and reasonable compensation to which the claimants are entitled. In the instant case, the petitioners laid the claim for Rs.3,00,000/- only, but, certainly, they cannot be deprived of Rs.3,43,500/-, though, it exceeds the claim made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and**

others[6]**, Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[7] and **Rajesh's** case (2 supra)**,** wherein it was held that it is duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

17. Concerning the rate of interest, Tribunal granted it at 9% per annum and the same is confirmed on the amount of Rs.2,54,000/- awarded by the Tribunal. However, on the enhanced amount i.e., Rs.89,500/-, interest at the rate of 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (2 supra)**.**

18. In the result, the Civil Miscellaneous Appeal is dismissed, while allowing the Cross-objection (SR).No.36680 of 2009, and the order and decree dated 15.03.2005, passed in O.P.No.312 of 2003 by the Tribunal are modified, enhancing the compensation from Rs.2,54,000/- to Rs.3,43,500/- (Rupees three lakhs forty three thousand five hundred only), while maintaining interest @ 9% per annum on the amount of Rs.2,54,000/- granted by the Tribunal, with interest @ 7.5% per annum on the enhanced amount of Rs.89,500/- (Rupees eighty nine thousand five hundred only) from the date of petition till realization. However, the petitioners are directed to pay the deficit court fee on the

[6] **AIR 2003 SC 674**
[7] **2012 ACJ 191 (SC)**

enhanced amount within a period of three (03) months from today. There shall be no order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

29.08.2016.
Msr

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