HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 538 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner in O.P.No.221 of 1998 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, seeking enhancement of compensation, mainly on the ground that the compensation awarded by the Tribunal was meagre and that there was no proper appreciation of evidence on record.

2. The II Additional Chief Judge, City Civil Court, Hyderabad, through common order and decree, dated 11.10.2000, in O.P. Nos. 221 of 1998 and 1452 of 1999, awarded compensation of Rs.2,30,000/- and Rs.42,000/- to the wife and parents of

M. Raju (hereinafter referred to as 'the deceased') respectively.

3. For the sake of convenience, the parties are referred to as arrayed in O.P.No.221 of 1998.

4. The fact situation occurring in the instant case is that on 06.01.1998, while the deceased was proceeding on his scooter bearing No.AP 28H 6592 along with his wife (petitioner) as the pillion rider towards Kushaiguda from Yadagiripally and when they reached Nagarjuna Nagar Colony near Bharat Cycle Stores, a lorry bearing No.ABT 9009, owned by the first respondent and driven by its driver in a rash and negligent manner came in opposite direction and dashed the scooter, due to which, the deceased sustained serious injuries and died instantly.

5. The petitioner claiming that the deceased was aged 25 years at the time of his death; that he was working as Supervisor in a Poultry Form, earning Rs.4,000/- per month and that he was contributing Rs.3,700/- per month for maintenance of the family, filed O.P.No.221 of 1998 seeking compensation of Rs.5,00,000/- from respondent No.1-owner of the vehicle, since it appears that the vehicle was not insured with any insurance company. The petitioner has also arrayed the parents of the deceased as respondent Nos.2 and 3.

6. Respondent Nos.2 and 3 also preferred a separate claim petition being O.P.No.1452 of 1999 on the file of the very same Tribunal arraying the driver and owner of the vehicle as respondent Nos.1 and 2 respectively, and the petitioner in O.P.No.221 of 1998 as respondent No.3.

7. In the former O.P., respondent No.1 filed a counter opposing the claim attributing negligence to the deceased on the ground that he did not follow the traffic rules while driving the scooter and thereby, sought to dismiss the claim petition against him. Respondent Nos.2 and 3 filed a common counter admitting the fact situation projected by the petitioner.

8. Likewise, in the latter O.P, the petitioner filed counter. However, the driver and owner of the vehicle remained *ex parte*.

9. Though, the Tribunal tried both the O.Ps jointly and passed common order, framing identical issues, but, recorded evidence separately.

10. In O.P.No.221 of 1998, the following issues were framed:

"1. Whether the accident was due to the rash and negligent driving of the lorry bearing No.ABT 9009 by its driver?
2. Whether the petitioner is entitled for compensation? If so to what amount?
3. To what relief?

11. In O.P.No.1452 of 1999, the following issues were framed:

"1. Whether the accident was due to the rash and negligent driving of the driver of the respondent No.2 i.e., the first respondent?
2. To what compensation, if any, the petitioners are entitled ? From whom?
3. To what relief ?"

12. In the former O.P., the petitioner examined herself as P.W.1, and got marked Exs.A.1 to A.10 to substantiate her claim. On behalf of the respondents, three witnesses were examined i.e., the owner of the vehicle as R.W.1, eyewitness as R.W.2 and respondent No.2 as R.W.3. But no documents were marked.

13. In the latter O.P., on behalf of the petitioners, the first petitioner was examined as P.W.1 and eyewitnesses to the accident were examined as P.Ws.2 and 3 and Exs.A.1 to A.11 were marked. On behalf of the respondents, though, respondent No.1-owner of the lorry was examined as R.W.1 and respondent No.3 was examined as R.W.2, no documents were marked.

14. The Tribunal found favour with the petitioners in both the claim petitions on issue No.1.

15. On issue No.2, the Tribunal refused to agree with the stand of the petitioner that the deceased was drawing salary of Rs.4,000/- per month, mainly on the ground that though, Ex.A.7- salary certificate was filed, the same was not proved by examining the employer. However, the Tribunal took into account the income of the deceased as Rs.2,000/- per month or Rs.24,000/- per annum and after deducting Rs.8,000/- towards his personal expenses, assessed the yearly contribution to the maintenance of his parents as well as wife at Rs.16,000/- i.e., Rs.4,000/- to the parents and Rs.12,000/- to the wife. Since the deceased was aged 26 years at the time of his death, the Tribunal applied multiplier '17.5' and worked out the loss of dependency insofar as the petitioner - wife is concerned at Rs.2,10,000/-. Insofar as the parents of the deceased are concerned, taking into consideration the age of the mother of the deceased as 49 years, the Tribunal applied multiplier '8' and worked out the loss of dependency at Rs.32,000/-. Besides the same, the Tribunal granted Rs.15,000/- towards loss of consortium and Rs.5,000/- towards loss of estate to the petitioner in the former petition. In the latter petition, Rs.10,000/- was granted towards loss of estate to the parents of the deceased. Thus, a total sum of Rs.2,30,000/- was granted to the wife of the deceased and Rs.42,000/- was granted to the parents of the deceased.

16. The wife of the deceased filed the present appeal on the ground that the compensation awarded by the Tribunal was on lower side.

17. Heard Sri P. Ramakrishna Reddy, learned counsel for the appellant. Though, the respondents are represented by their respective counsel, none represents for them.

18. Admittedly, the parents of the deceased, who are the claimants in the latter O.P, have not chosen to prefer any appeal seeking enhancement of compensation.

19. The only short question that arises for consideration is whether Rs.2,30,000/- awarded by the Tribunal is just and adequate? Or whether the appellant is entitled to enhancement as prayed by her?

20. The finding recorded by the Tribunal so far as the monthly earnings is concerned, certainly, it is very reasonable and does not suffer from any legal infirmity. The reason being that, though, Ex.A.7 was captioned as salary certificate, the author of it or any other person concerned was not examined by the appellant. In that view of the matter, certainly, that finding does not warrant any interference. Hence, the same is maintained.

21. Next question that arises for consideration is whether the appellant is entitled for further amounts?

22. A perusal of the impugned order discloses that no amount was awarded towards future prospects. In view of the judgment of the Hon'ble Supreme Court in ***Sarla Verma & others v. Delhi Transport Corporation and another***[1]**,** certainly, the appellant is entitled to future prospects in addition to loss of dependency determined by the Tribunal. Since the age of the deceased was 26 years at the time of his death, the appellant is entitled to 50% of the loss of dependency calculated by the Tribunal. Hence, the appellant is entitled to Rs.1,05,000/- towards future prospects. Though, the Tribunal has granted Rs.15,000/- towards loss of consortium and Rs.5,000/- towards loss of estate, no amount was granted towards funeral expenses and the conventional sums appear to be on lower side. Therefore, the appellant is entitled to Rs.50,000/- towards conventional amount, as against Rs.20,000/-, which constitutes Rs.15,000/- towards loss of consortium and Rs.5,000/- towards loss of estate.

23. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.2,30,000/- to Rs.3,65,000/- (Rupees three lakhs sixty five thousand only). However, the appellant is entitled to interest on the compensation of Rs.2,30,000/-, awarded by the Tribunal, @ 12% per annum, and on the enhanced compensation of Rs.1,35,000/- @ 7.5% per annum, from the date of petition till realisation, as per the decision of the Apex Court in ***Rajesh and others v. Rajbir Singh and others***[2]**.**

24. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs.

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

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A. SHANKAR NARAYANA, J

Date: 27.07.2016
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[1] (2009) 6 Supreme Court Cases 121

[2] **2013ACJ1403 = 2013(4)ALT35**