THE HONOURABLE SRI JUSTICE M.SEETHARAMA MURTI

MACMA No.914 OF 2005

JUDGMENT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for brevity) assailing the award dated 30.11.2004 in MVOP. No.483 of 2003 on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool, ('the Tribunal', for brevity), is filed by the claimants, who are not satisfied with the quantum of compensation awarded by the Tribunal.

2. I have heard the submissions of the learned counsel for the appellants/claimants ('the claimants', for brevity) and the learned counsel for the second respondent/insurance company ('the insurance company', for brevity). None appeared for the first respondent. It is represented that the first respondent owner of the vehicle involved in the accident is not a necessary party in view of the Division Bench decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[1].

3. The facts that lead to the filing of the present appeal by the claimants may be stated, in brief, as follows: -

The first claimant is the wife, the claimants 2 and 3 are the parents and the claimants 4 and 5 are the minor children of the deceased, A. Kantha Rao. The said claimants are aged about 22, 60, 52, 4 and 2 years respectively as on the date the claim petition was filed claiming compensation for the loss sustained by them owing to the untimely death of the said deceased due to his involvement in the pleaded motor vehicle accident, which had occurred on 11.07.2003 at about 5.45 AM on the National Highway 18 at a Culvert - after crossing the Battuluru Village, as a result of the rash and negligent driving of the tourist bus bearing registration no.KA-02-C-0566, by its driver. Though the insurance company had *inter alia* contended that the accident had not taken place in the manner pleaded by the claimants, the Tribunal, after considering the evidence of PW2, an eye witness to the accident, and the contents of the certified copies of the FIR, the inquest report and the Post Mortem Examination report of the deceased, the exhibits A1, A2 and A5, had recorded a finding on issue no.1 that the pleaded accident resulting in the death of the deceased had occurred on account of the rash and negligent driving of the aforementioned tourist bus, by its driver. The claimants claimed a total compensation of Rs.16,50,000/- and by the award impugned, the Tribunal had awarded compensation of Rs.9,43,080/- with interest at 9% per annum simple from the date of the petition till the date of realization. Dissatisfied with the quantum of compensation awarded, the claimants had preferred this appeal. The insurance company did not prefer any appeal or cross appeal as per the submissions made at the hearing.

4. The learned counsel for the claimants would contend that the deceased was of 30 years of age at the time of his involvement in the accident and that he was working as APSP constable in Gray Hounds Wing, Hyderabad, and was earning Rs.10,000/- as salary and Rs.1,750/- as fixed TA per month and that he was hale and healthy prior to the accident and was contributing his entire income for the family and that all the claimants used to depend on his earnings and that the Tribunal while determining the compensation under the head 'future loss of income' had erroneously deducted 1/3rd towards personal and living expenses of the deceased instead of deducting 1/4th as the number of dependant family members is 5 and that the Tribunal had wrongly applied the multiplier '12' instead of applying multiplier '16' and that the Tribunal had failed to follow the precedential guidance in the decisions of the Supreme Court while determining the quantum of compensation and that the Tribunal did not award adequate compensations under the heads viz., ‘loss of consortium’ and ‘other conventional heads’ and that the Tribunal also did not award any compensation for ‘loss of love and affection and career guidance to the minor children’ and that the Tribunal had failed to take note of the fact that as on the date of the death, the deceased was having 25 more years of service and has got bright prospects of promotion to higher positions in service and that the deceased would have been promoted as Sub-Inspector of Police in the near future had he continued in service and that the Tribunal, therefore, erred in not making any addition to his actual salaried income towards future prospects and that, therefore, the appeal may be allowed and a just, reasonable and fair compensation to which the claimants are entitled, under facts and in law, may be awarded.

5. On the other hand, the learned counsel for the insurance company while supporting the award of the Tribunal had contended that the Tribunal had considered the facts accurately and the evidence in proper perspective and that it had correctly determined the compensation as per the facts after applying the law that was applicable to the case as on the date of passing of the award and that what is to be examined is as to whether just, reasonable and fair compensation was awarded or not and that in the facts and circumstances of the case, on such examination it is clear that the compensation awarded, which is nearly Rs.10,00,000/- is just and reasonable. He would further submit that amount to be awarded under the conventional heads in all is Rs.50,000/-only and that the Tribunal had failed to deduct any amount towards income tax and profession tax from the salary of the deceased and that the tribunal also did not take into account the other standard and statutory deductions while determining the annual salary of the deceased and that in any view of the matter, the compensation that was awarded cannot be termed as inadequate and that, therefore, the contentions raised by the claimants in this appeal are devoid of merit and that the appeal is liable to be dismissed.

6. Before formulating the point on the adequacy or otherwise of the compensation, it is necessary to state that the second respondent - insurance company has not preferred any appeal or cross appeal challenging the finding of the Tribunal on the first issue in regard to the rash and negligent driving of the driver of the tourist bus, which was involved in the accident. However, on a perusal of the material record, this court is satisfied that the said finding recorded by the Tribunal, after appreciation of the facts correctly and the evidence in proper perspective, does not call for interference. Be that as it may.

7. 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?***

8. POINTS

8.1 The case of the claimants coupled with the defence of the insurance company when examined in *juxtaposition* with the evidence brought on record would show that the deceased, at the time of his involvement in the pleaded accident, was employed as a Constable in Grey Hounds of APSP and that he was of 35 years of age and was discharging his duties in that capacity and was earning Rs.9,469/- as salary per month and has got a balance service of more than 25 years with prospects of advancement in career and life. Be that as it may, since there is no satisfactory proof supported by the pleading that the deceased was earning permanent TA, the Tribunal had considered only the salary of the deceased as his income as on the date of his death. As rightly contended by the learned counsel for the insurance company some deductions should be made towards income tax, profession tax and other standard/statutory deductions before determining the monthly income of the deceased, as the actual salary should be considered as 'salary (-) taxes'. Hence, this Court is of the considered view that the actual salary of the deceased can be taken as Rs.8,500/- per month after the statutory deductions towards taxes and standard deductions. Following the precedential guidance in the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation and others**[2]**,** addition of 50% salary to the actual salary income of the deceased towards future prospectus has to be made as the deceased had a permanent job and was below the age of 40 years. If 50% is so added, the income of the deceased works out to Rs.12,750/- (Rs.8,500/- + Rs.4,250/-) per month; the annual income of the deceased works out to Rs.1,53,000/- (Rs.12,750 x 12). Since the dependants are 5 in number, a 1/4th can be deducted towards personal and living expenses of the deceased. If so deducted the annual contribution to the family works out to Rs.1,14,750/- (Rs.38,250/- - 1,53,000/-). Since the deceased was of 33 years of age, the appropriate multiplier is '16' (sixteen). If the multiplicand is multiplied by the said multiplier, the compensation under the head 'loss of dependency' works out to Rs.18,36,000/- (Rs.1,14,750 x 16). The said sum is accordingly awarded as compensation under the head 'loss of dependency'.

8.2 Coming now to the compensation under the other heads, the Tribunal had awarded Rs.15,000/- each towards 'loss of consortium to the wife' and 'loss of estate' besides Rs.2,500/- towards 'funeral expenses' and Rs.500/- towards 'transportation'.

8.3 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 and career guidance' to the minor children and 'loss of consortium' and 'loss of estate', and Rs.25,000/- towards 'funeral expenses'. The amount awarded by the Tribunal, in the well considered view of this Court, is not in accordance with the ratios in the precedents in **Anjani Singh and others v. Salauddin and others**[3]. The Supreme Court by following the ratio in a three Judge Bench decision in **Rajesh and Others vs. Rajbir Singh and others**[4] had awarded in that case Rs.1,00,000/- each towards 'loss of love and affection' for the children and 'loss of consortium' to the wife of the deceased. The Supreme Court had also held that it would be only 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 Supreme Court had further awarded Rs.1,00,000/- (Rupees one lakh only) towards 'loss of care and guidance for minor children', while awarding Rs.25,000/- (Rupees twenty five thousand 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 the 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'; further, Rs.1,00,000/- is awarded towards 'loss of love and affection and career guidance' to the minor children; and Rs.5,000/- each is further awarded under the two conventional heads 'loss of estate' and 'transport expenses'.

8.4 Before concluding the discussion on the aspect of compensation to be awarded under the conventional heads, it is necessary to mention that the learned counsel for the insurance company having placed reliance on the decision in **Ramilaben Chinunbhai Parmar and others**[4] had strenuously contended that in this cited case the Supreme Court had awarded Rs.50,000/- only under the conventional heads as granted by the tribunal, and that, therefore, apart from compensation under the head 'loss of dependency', the claimants are entitled to Rs.50,000/- only as compensation under all the conventional heads and no other amounts. A reading of the decision would show that the decision was rendered on the facts peculiar to the case. In paragraph 7 of the judgment of the cited case, the Supreme Court held as follows: -

> **'Even though we are not convinced with the calculation and reasoning given by the Tribunal, but keeping in view the peculiar facts and circumstances of the case, where the deceased died at an early age of 46 years, had 12 more years of service, would have got promotions, resulting in hike in his pay and emoluments, we feel that ends of justice would be met if the potential earning capacity of the deceased is fixed at Rs.30,000/- p.m............'** It was also held as follows: **'In addition to that, the appellants are entitled to Rs.50,000/- as conventional amount as granted by the Tribunal.'**

Thus, the compensation was determined in that case having regard to the facts peculiar to the case. The Supreme Court in **Padmasundar Rao v. State of Tamilnadu**[5] held that the courts shall not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed**.** Therefore, in the light of the ratios in the decisions relied upon by the learned counsel for the claimants, which squarely apply to the facts of the case, the above decision relied upon by the learned counsel for the 2nd respondent/insurance company does not advance the defence of the insurance company in the facts peculiar to this case.

8.5 Accordingly, the claimants are entitled for the following compensation amounts:

Sl.No.	Head of compensation	Amount (in Rs.)
(1)	Loss of dependency	18,36,000/-
(2)	Loss of consortium	1,00,000/-

(3)	Loss of love and affection and career guidance	1,00,000/-
(4)	Funeral expenses	25,000/-
(5)	Loss of estate and transport expenses	10,000/-
	Total	20,71,000/-

(Rupees Twenty Lakhs and Seventy One Thousands only)

8.6 As already noted, the Tribunal had awarded Rs.9,43,080/- against the claim of Rs.16,50,000/- originally made. On 17.02.2016 this court had allowed the application for amendment of the claim petition in regard to quantum of compensation and permitted for the amendment of the claim petition insofar as the claim amount from Rs.16,50,000/- to Rs.25,00,000/-. The compensation as determined and awarded worked out to Rs.20,71,000/-. As per the decision in **Nagappa v. Gurudayal Singh and others**[6] there is no restriction for the Tribunal or the Court to award just compensation, which is reasonable on the basis of the facts and the evidence produced on record. Thus, as per the determination supra, the reasonable, just and fair compensation to which the claimants are entitled to is Rs.20,71,000/- (Rupees Twenty Lakhs and Seventy One Thousands only). In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. The rest of the claim is disallowed. The points are answered accordingly.

8.7 On the compensation already awarded, the Tribunal had granted interest at 9% per annum simple. Coming to the rate of interest on the enhanced portion of compensation, it is just, fair and reasonable to award interest at the rate of 7.5% per annum simple on the said enhanced compensation amount.

9. In the result, the appeal is allowed in part and a total compensation of Rs.20,71,000/- (Rupees Twenty Lakhs and Seventy One Thousands only) is awarded to the claimants. The enhanced compensation thus is Rs.11,27,920/- (20,71,000/- (-) Rs.9,43,080/-). The enhanced compensation is apportioned as under-

From out the said enhanced amount, the claimants 1, 4 and 5 are held entitled to an amount of Rs.3,00,000/- each; Rs.1,00,000/- is awarded to the second claimant, who is the father of the deceased and Rs.1,27,920/- is awarded to the third claimant, who is the mother of the deceased.

The insurance company is directed to deposit before the Tribunal the enhanced portion of the compensation aforementioned with interest at 7.5% simple from the date of original petition till the date of deposit within two months from the date of the receipt of a copy of this judgment. 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. The claimants shall pay, as per the procedure, the deficit court fee on the difference compensation i.e., the enhanced compensation. On such deposit of the amount before the Tribunal by the Insurance Company, the first claimant is permitted to withdraw Rs.1,00,000/- for the present. The claimants 2 and 3 are permitted to withdraw their respective shares with interests on their respective shares. The first claimant is also permitted to withdraw the accrued interests on the compensation amounts of her minor children - the claimants 4 and 5. The Tribunal shall keep the principal amount of the said minor claimants and also balance compensation amount of the first claimant in three separate fixed deposits in their respective names in any Nationalized Bank till the release of the same to the said respective claimants as per the norms applicable.

There shall be no order as to costs in this appeal.

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

M.SEETHARAMA MURTI, J

28th March 2016
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[1] 2001 (1) ALT 495

[2] 2009 ACJ 1298

[3] 2014 ACJ 1565

[4] 2014ACJ1430

[5] AIR 2002 SC 1334

[6] AIR 2003 SC 674