HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.139 OF 2006

JUDGMENT:

This appeal is arising out of the order dated 03.11.2005 in O.P.No.644 of 2002 on the file of Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short "Tribunal").

2. The appellants herein are the legal heirs of deceased Seepally Yerranna, who died in a motor vehicle accident on 27.10.2001. They filed O.P.No.644 of 2002 under Sections 166(1) (c) and 163 (A) of the Motor Vehicles Act claiming compensation of Rs.4,50,000/- on account of the death of Seepally Yerranna.

3. The brief facts of the case are that while the deceased Seepally Yerranna was being engaged by respondent No.3 for grinding paddy in the field along with six other labourers, was proceeding in a tractor and trailor bearing Nos.AP1D 6293 and APIT 4974, and on the way near Hanuman Temple, one lorry bearing No.AP9U 7111 came in opposite direction in a high speed driven in a rash and negligent manner and dashed against the tractor and trailor, as a result of which, the deceased and 6 others died on the spot. The police registered a case in Crime No.71/2001 under Sections 304-A, 337 and 338 IPC against the lorry driver i.e., respondent No.1 for his rash and negligent driving. At the time of accident, the deceased was aged about 30 years and was working as agricultural labourer and earning Rs.4,500/- per month. The legal heirs of the deceased, the wife, two daughters,

two sons and mother have claimed compensation of Rs.4,50,000/- on account of his death.

4. Respondent No.1, driver-cum-owner of the vehicle and respondent No.3, owner of the tractor, in which the deceased traveled, have remained *ex parte* before the Tribunal. Respondent No.2 – The United India Insurance Company Limited filed counter denying the averments in the petition and contended that the compensation claimed is excessive and sought for dismissal of the petition. Respondent No.4 – The New India Assurance Company Limited, the insurer of the tractor, had filed counter alleging that the accident occurred due to the rash and negligent driving of the driver of the lorry.

5. During enquiry, before the Tribunal, on behalf of the appellants, PWs.1 and 2, the wife of the deceased and one S.Rajanna, were examined and Exs.A1 to A.15 were marked. On behalf of the respondents, Exs.B.1 to B.4 were marked. Exs.B.1 copy of insurance policy of tractor, B.2 attested copy of charge sheet, B.3 attested copy of driving license and B.4 copy of insurance policy of lorry. No oral evidence has been adduced by the insurance company.

6. On consideration of the oral and documentary evidence of the witnesses, the Tribunal has awarded a compensation of Rs.2,14,000/- as against the claim of Rs.4,50,000/-. Being aggrieved by the impugned award, this appeal has been preferred.

7. Learned counsel for the appellants Sri S.Surender Reddy submitted that the Tribunal has not considered the correct age of

the deceased and his income while calculating the compensation. The deceased was aged about 30 years old, whereas the Tribunal has taken 32 years basing on the Post Mortem Report. He further submitted that the income of the deceased was Rs.4,500/- per month, whereas the Tribunal has taken the income of the deceased as Rs.1,500/- per month. The Tribunal has deducted 1/3rd towards personal expenses of the deceased, whereas 1/5th has to be deducted, as the deceased is having six family members depending on him. He further submitted that the Tribunal has awarded meager amount towards loss of consortium and loss of estate and that the Tribunal has not awarded any compensation towards funeral expenses.

8. Sri G.Purushotham Rao, learned counsel appearing for respondent No.2 submitted that the award passed by the Tribunal does not require any interference, as the Tribunal has rightly considered the age and income of the deceased.

9. The point for consideration in this matter is whether there are sufficient grounds to enhance the compensation?

10. **POINT:** Admittedly the deceased was a coolie by profession. While he was engaged as a coolie for grinding paddy in the fields by respondent No.3, he worked along with other six labourers. This fact clearly proves that the deceased was an agricultural coolie. The Tribunal has taken into consideration the income of the deceased as Rs.1,500/- per month. In the light of decision of the Hon'ble Supreme Court in **Sarala Varma and**

others v Delhi Transport Corporation and another[1], the income of the deceased can be taken into consideration as Rs.3,000/- per month.

11. The contention of the learned counsel for the appellants that the Tribunal wrongly deducted 1/3rd of the income towards personal expenditure cannot be accepted. No doubt, the deceased was having six family members depending on him, but dependency is no consideration for deducting 1/5th towards personal expenditure. Hence, I do not see any valid grounds to interfere with the finding of the Tribunal in this regard.

12. The income of the deceased is taken into consideration as Rs.3,000/- per month instead of Rs.1,500/- and therefore, on that ground also, the deduction of 1/3rd from the salary of the deceased is appropriate. I do not see any valid grounds to interfere with the finding of the tribunal in taking into consideration the age of the deceased as 32 years, as it is based on Post Mortem Report. Therefore, the annual income of the deceased comes to Rs.3,000/- X 12 months = Rs.36,000/-, and after deducting 1/3rd, it comes to Rs.24,000/-. The multiplier applicable to the age of the deceased for 32 years is '16' as per the ratio rendered in **Sarala Varma**'s case (1 supra). Hence, the compensation comes to Rs.3,84,000/- (Rs.24,000/- X 16 = Rs.3,84,000/-). The Tribunal has awarded Rs.10,000/- towards loss of consortium, which is now enhanced to Rs.20,000/-. The Tribunal has not awarded any amount towards funeral expenses. Therefore, an amount of Rs.5,000/- is awarded towards funeral expenses.

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[1] 2009(6) SCC 121

13. On consideration of the evidence on record, the award passed by the Tribunal granting compensation of Rs.2,14,000/- (Rs.2,04,000/- towards of dependency and Rs.10,000/- towards loss of consortium) is enhanced to Rs.3,89,000/-. The tabular form given below would show the enhancement particulars.

Sl.No.	Name of Head	Compensation Awarded by Tribunal	Compensation Awarded by this Court
01.	Loss of dependency	Rs.2,04,000/-	Rs.3,84,000/-
02.	Loss of consortium	Rs.10,000/-	Rs.20,000/-
03.	Funeral expenses	Nil	Rs.5,000/-
	TOTAL	**Rs.2,14,000/-**	**Rs.4,09,000/-**

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.2,14,000/- to Rs.4,09,000/- with proportionate costs and interest @ 7.5% per annum. The second respondent is directed to deposit the amount within two months from the date of receipt of a copy of this order. On such deposit the appellants are permitted to withdraw half of the decretal amount, and the remaining amount can be withdrawn after expiry of the appeal time. There shall be no order as to costs.

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

G.SHYAM PRASAD, J

Date: 23.11.2016
TJMR