THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CIVIL MISCELLANEOUS APPEAL No.43 OF 1998

JUDGMENT :

Aggrieved by the Award in O.P.No.102 of 1993 dated 10.06.1997 passed by the Motor Accidents Claims Tribunal (Additional District Judge), Nizamabad, the claimants preferred the instant appeal.

2. The factual matrix of the case is thus :

On 23.12.1992 when the deceased Adam Indur Mallesh was travelling in RTC bus bearing No.AEZ 7290 from Nizamabad to Gutpa Village, and when the bus reached Gundlapally village, the driver of the bus drove the same in a rash and negligent manner, suddenly applied brakes and thereby the bus door was opened and the deceased fell down on the ground due to which the rear wheel of the bus ran over on him causing his instantaneous death. The claimants who are his wife and children filed the claim petition against the driver and RTC claiming a sum of Rs.2,00,000/- as compensation under several heads.

ii. The respondents filed the counter and opposed the claim application.

iii. During trial PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked on behalf of the claimants. RW.1 was 0examined on behalf of the respondents.

iv. The Tribunal while appreciating the evidence has ultimately awarded Rs.1,35,000/- as compensation with proportionate costs and interest @ 12% p.a., against respondents 1 to 3. Aggrieved by the same, the claimants filed the instant appeal.

3. Heard Sri K.M.Mahender Reddy, learned counsel for the appellants and Sri N. Vasudeva Reddy, learned standing counsel for respondents 2 and 3.

4a. Criticizing the compensation awarded as low and inadequate learned counsel for the appellants argued that the Tribunal erred in accepting the age of the deceased as 45 years inspite of the fact that the documentary evidence produced by the claimants showing his age as 40 years.

b. Secondly he argued that the trial Court erred in taking the earnings of the deceased as Rs.1500/- per month. Learned counsel for the appellants would argue that the deceased besides having agriculture, was working as a paddy commission agent and was earning Rs.5000/- per month. Therefore, the Tribunal ought to have taken his earnings as Rs.5000/-.

c. Thirdly, he argued that there are five dependants on the deceased and therefore, following the judgment of the Hon'ble Supreme Court in ***Sarla Verma (Smt) and others Vs Delhi Transport Corporation and another***[1], 1/4th instead of 1/3rd is to be deducted from the gross earnings of the deceased. Learned counsel would also argue that since the Tribunal failed to take the future prospects of the deceased into consideration, suitable amount has to be added to the earnings of the deceased towards future prospects.

d. Learned counsel further argued that the trial Court has granted low amount towards loss of consortium and following

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[1] (2009) 6 SCC 121

the decision in ***Rajesh and others Vs Rajbir Singh and others***[2], suitable amount may be awarded for the loss of consortium. He thus prayed to allow the appeal and enhance the compensation. He would further submit that the Court has power to award more compensation than prayed for by the claimants in case the claimants are eligible for the said amount.

5a. Opposing the appeal learned standing counsel for the respondent-RTC, argued that the trial Court has rightly awarded the compensation taking into consideration the oral and documentary evidence. Therefore, there is no need to enhance the compensation. In expatiation he would argue that going by the admission of Pw.1 that her husband was 10 years elder to her, the trial Court rightly accepted and fixed the age of the deceased as 45 years and therefore there is no need to revise the same.

b. He also argued that except claiming that the deceased was earning Rs.5000/- per month, the claimants have not produced any cogent evidence in that regard and therefore, the Tribunal has rightly fixed the daily earnings of the deceased as Rs.50/-, considering the deceased as an agricultural labourer and therefore, there is no need to revise the earnings of the deceased. Learned counsel fairly conceded that the Tribunal has not taken into consideration the future prospects of the deceased and that suitable amount can be added in that regard.

c. Learned standing counsel also fairly conceded that in view of **Sarla Varma's case (supra)** 1/4th instead of 1/3rd can be deducted from the gross earnings of the deceased. So far as the consortium is concerned, learned counsel for the respondent would

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[2] (2013) 9 SCC 54

submit that a three Judges Bench of the Hon'ble Apex Court in ***Ramilaben Chinubhai Parmar Vs National Insurance Co.,*[3]** has awarded Rs.50,000/- as conventional amount in a death case and therefore, the same may be considered.

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

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

POINT :

7. Accident, involvement of APSRTC Bus bearing No.AEZ 7290 and death of the deceased are not in dispute. The sole question is quantum of compensation. It may be noted that earlier the Single Judge of this Court while hearing the appeal has formulated an issue to the effect whether the Tribunal/Court can award compensation under the Motor Vehicles Act over and above the amount claimed by the claimants, though subject to the payment of Court fee etc., and referred the same for consideration of a larger Bench. Thereupon the Full Bench of this Court has answered the reference by taking into consideration the decision of the Hon'ble Supreme Court in ***Nagappa Vs Gurudayal Singh and Others*[4]** and other decisions and answered the reference in affirmative.

8. Thus, now it is clear that the Court can award more compensation than claimed by the claimants in their claim petition, if they are so deserved.

9. Now, coming to the appeal, the first submission of learned counsel for the appellants is that Tribunal erred in taking

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[3] LAWS(SC)-2014-4-67
[4] (2003) 2 Supreme Court Cases 274

the age of the deceased as 45 years. He would refer to Ex.A.3-Inquest report and Ex.A.4-Post Mortem report and argue that the age of the deceased was mentioned therein as 40 years. It is true that in Exs.A.3 and A.4 the age of the deceased was mentioned as 40 years, however, the said age was mentioned only on information. As per the deposition of P.W.1-wife of the deceased, she was 40 years by the date of her evidence and adding five years to her age, the Tribunal has fixed the age of the deceased as 45 years. Hence, the age of the deceased can be safely accepted as 45 years.

10. As far as the income of the deceased is concerned the Tribunal for want of proper proof of earnings of the deceased considered the deceased as agricultural labourer and fixed his daily wage as Rs.50/-. Learned counsel for the appellants vehemently argued that even a coolie earns not less than Rs.100/- to Rs.150/- per day and therefore, the Tribunal ought to have taken his income as Rs.4500/- per month. It should be noted that the accident was occurred in the year 1992. Having regard to it, the daily income of the deceased as an agricultural labourer can be fixed at Rs.75/-. Thus the annual income comes to Rs.27,000/- (Rs.75x30x12).

11. The Tribunal has not added any future prospects to the income of the deceased. In ***Santosh Devi Vs National Insurance Company Ltd., and Others***[5], the Apex Court observed that future prospects have to be added to the self-employed persons also. Governed by it, 30% is added to the income of the

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[5] 2012 (6) SCC 421

deceased towards future prospects which comes to Rs.35,100/- (Rs.27,000/- x 30% = Rs.8100+Rs.27,000/-).

12. So far as deduction is concerned, since there are five dependants, following ***Sarla Varma's case (supra)*** 1/4th is deducted from the gross earnings of the deceased. Thus, the net annual contribution of the deceased to his family comes to Rs.26,325/- (Rs.35,100x3/4).

13. As far as multiplier is concerned, since the deceased was 45 years old, 14 can be accepted as multiplier following ***Sarla Varma's case (Supra)***. Thus, the loss of dependency comes to Rs.3,68,550/- (14 x Rs.26,325/-).

14. The other conventional amounts like funeral expenses, loss of consortium and loss of estate are concerned in ***Ramilaben Chinubhai Parmar's case (supra)*** the three Judges Bench of Apex Court awarded Rs.50,000/-. Following the same Rs.50,000/- is awarded to the claimants towards conventional amounts and Rs.5000/- towards pain and suffering.

15. Thus, the total awarded compensation to the claimants under different heads is as follows :

Loss of dependency	-	Rs.3,68,550/-
Compensation for Conventional heads Like Loss of consortium Funeral expenses and Loss of estate	-	Rs.50,000/-
Pain and Suffering	-	Rs.5000/-
Total		Rs.4,23,550/-

16. Thus, the total compensation is enhanced from Rs.1,35,000/- to Rs.4,23,550/-.

17. In the result, the appeal is allowed and ordered as follows :

(i) The compensation is enhanced from Rs.1,35,000/- to Rs.4,23,550/- with proportionate costs. So far as interest is concerned the claimants are entitled to interest on the compensation amount @ 12% p.a., from the date of O.P., till the date of appeal and later at 7.5% p.a., till the date of realization.

(ii) The claimants are directed to deposit stamp duty on the additional compensation amount i.e., Rs.2,23,550 (Rs.4,23,550 - Rs.2,00,000/-) within one month from the date of this judgment.

(iii) The respondents are directed to deposit compensation amount within two (2) months from the date of judgment failing which the claimants can take up execution against the respondents.

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

U. DURGA PRASAD RAO,J

18th October, 2016
Rds

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

<u>CIVIL MISCELLANEOUS APPEAL No.43 OF 1998</u>

<u>Dated : 18.10.2016</u>

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