HON'BLE SRI JUSTICE M.S.K.JAISWAL

MACMA No. 1389 of 2010

JUDGMENT:

The appeal is preferred by the appellants/claimants, who are the parents and sister of the deceased boy – B.Sai Krishna, who died in a fatal road accident on 30.07.2006 at about 11.45 a.m. on the bridge of National Highway No.5, Opposite to Sishal Transport at Vishakapatnam, involving the Lorry bearing No.AP.16Y.1656, owned by the 1st respondent and insured by the 2nd respondent.

2. The appellants/claimants Nos.1 to 3 are the parents and sister of the deceased boy, and they filed MVOP.No.333 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Court, Kurnool at Nandyal, claiming total compensation of Rs.16,00,000/-. However, the Tribunal awarded a sum of Rs.2,66,500/- by its orders dated 04.06.2010 as compensation. Dissatisfied with the said quantum of compensation, the appellants/ claimants preferred the present appeal.

3. The contention of the learned counsel for the appellants is that the deceased was an Engineering Graduate and was employed with PW-3 and earning a sum of Rs.18,750/-, as is evidenced by Ex.X-1, salary certificate issued by PW-3. The Tribunal erred in disbelieving the said evidence on the ground that PW-3, subsequently, has given a sworn affidavit to the Insurance Company stating that the deceased was earning Rs.3,000/- per month, but not Rs.18,750/- as stated in Ex.X-1. The learned counsel submits that

the Tribunal, basing on the said sworn statement, erred in concluding that the notional income of the deceased boy was Rs.3,000/- per month. The learned counsel further submits that the Tribunal also erred in not considering the future prospects of the deceased boy, whose age was just 22 years old on the date of the accident. Therefore, the compensation granted by the Tribunal is grossly inadequate and erroneous, and therefore the compensation is to be enhanced.

4. On behalf of the Insurance Company, the learned Standing Counsel submits that the Tribunal has taken all the factual aspects into consideration in determining the quantum of compensation. It is also submitted by the Standing Counsel for the 2nd Respondent/ Insurance Company that the Tribunal erred in deducting only 1/3rd towards the personal expenses of the deceased boy, whereas the settled principle of law is for a bachelor 50% of his income is to be deducted towards his personal and living expenses and therefore, the claimants are not entitled for any enhancement in the present appeal.

5. Heard the learned counsel appearing for both the parties and considered the material on record.

6. The manner and method in which the accident took place, the date and time of the accident, the ownership of the lorry by the 1st respondent or its insurance with the 2nd respondent are not in dispute. The only point involved is with regard to the quantum of

the compensation. A perusal of the oral and documentary evidence produced before the Court shows that when the deceased boy met with the accident, he has completed his four years Engineering course, but did not complete the course and immediately after completion of the course the deceased boy appears to have joined the establishment of PW-3. After he worked as such just about 75 days, he met with the accident and died.

7. The learned counsel appearing for the claimants has relied upon the decision of a Division Bench of this Court in *B.Ramulamma v. Venkatesh Bus Union, Lingarajapuram, Bangalore*[1] wherein it was held that for an Engineering Graduate, the minimum salary is to be taken as Rs.12,000/- to Rs.15,000/-. However, the facts of the present case are quite distinct from the facts of the case dealt by the Division Bench for the reason that the deceased boy in the present case did not pass all the subjects of Engineering Course, though completed the four years course. That apart, while arriving at the income of the deceased person, if there is no evidence produced on behalf of the claimant, there can be certain guess work to work out his income, and the Tribunal can arrive at a notional income of the deceased person. But, if the claimants produced evidence in support of their contention and claim, they cannot wriggle out and cannot contend that the deceased boy would earn more than what has been spoken to by the witnesses examined on behalf of the claimants.

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[1] 2009(6) ALD684 (DB)

8. In any way, as already stated above, PW-3 is said to be the employer of the deceased. Though he gave Ex.X-1 salary certificate showing that the deceased was drawing an amount of Rs.18,750/- per month, but when it came to evidence, he admitted that the deceased boy was only earning Rs.3,000/- per month, and to that effect he has given an affidavit, under Ex.B-1 to the Investigator of the Insurance Company, at the time of verification, but not as stated in Ex.X.1 at the rate of Rs.18,750/- per month. Therefore, the Tribunal had no option except to accept the evidence of PW-3 and as stated in Ex.B-1, where under it is clearly stated that the deceased was earning only an amount of Rs.3,000/- per month. Having done so, the Tribunal erred in deducting 1/3rd towards the personal and living expenses. As already stated, the settled principle is that for a bachelor person 50% of his income should be deducted towards his personal and living expenditure. The Tribunal has also erred in not taking into consideration the various authorities of the Supreme Court and added to that, for an Engineering graduate the future prospects at the rate of 50% of his present salary is to be taken into consideration.

9. On this analysis, a reference can be made to a decision of this Court in *N.Surender Rao v. B.Swamy*[2] wherein after referring to various authorities of the Supreme Court, the Division Bench of this Court held at Para-36 of its judgment, as under:

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[2] 2014 ACJ 2613

> "*Hence*, in view of the principles laid down by the Apex Court in Fakeerappa (2004 ACJ 699 (SC)) and Sarla Verma (2009 ACJ 1298 (SC)), the Tribunal rightly deducted 50% of the income of deceased Abinav towards his personal expenses. However, erroneously applied the multiplier taking into consideration the average age of parents of deceased wrongly relying on the principle laid down by the Apex Court in Ramesh Singh v Satbir Singh [2008 ACJ 814 (SC)], even though no guidelines were laid down therein and as such it is not a binding precedent. Hence, in view of the principles laid down by the Apex Court in and Sarla Verma (supra), the relevant multiplier applicable to the age group of deceased 15 to 20 is '18' and if the same is multiplied with the annual income of the deceased after deducting 50% of his personal expenses i.e., with Rs.72,000/-, the compensation under the head of loss of dependency comes to Rs.12,96,000/-. The appellants also claimed compensation under the heads of loss of estate and funeral expenses, wherein the Tribunal awarded a meager amount of Rs.15,000/- and Rs.5,000/- under the two heads. In view of the principles laid down by the Apex Court in Rajesh and others v Rajbir Singh (2013 ACJ 1403(SC), the appellants are entitled to an amount of Rs.1,00,000/- under the head of loss of estate and an amount of Rs.25,000/- under funeral expenses. Thus, in all the appellants are entitled to an amount of Rs.14,21,000/-."

10. Therefore, if the income of the deceased is taken as Rs.3,000/- per month as spoken by PW-3, the Tribunal ought to have deducted 50% towards the personal and living expenses, and added 50% towards the future prospects, which comes again to Rs.3,000/- per month. The Tribunal erred in applying the multiplier '11', which is applicable to the age of the mother of the deceased, whereas it is now settled law that in case of death of a bachelor, the age of the

deceased should be taken into consideration, but not the age of his mother. Therefore, the proper multiplier will be '18', but not '11' as applied by the Tribunal. The Tribunal has not awarded reasonable amount towards the loss of estate and funeral expenses. The deceased was a young-boy, who has completed the course of Engineering, however, he might not have passed all the subjects as noticed from Ex.A-7 i.e., Memorandum of Marks, which are produced by the claimants. Therefore, in view of the above, the amount awarded by the Tribunal cannot be just and reasonable and needs to be enhanced.

11. The income of the deceased is to be taken as Rs.3,000/-, minus 50% towards his personal and living expenses, and plus 50% towards future prospects. Thus, the income of the deceased again comes to Rs.3,000/- per month. If the multiplier '18' is applied, it comes to Rs.6,48,000/-, rounded to Rs.6,50,000/-. In addition, the claimants are entitled to Rs.1,00,000/- towards the loss of estate and Rs.25,000/- towards funeral expenses, as has been granted in the decision referred to supra. Thus, the total compensation that can be awarded to the claimants comes to Rs.7,75,000/- as against the amount of Rs.2,66,500/- awarded by the Tribunal.

12. In the result, the appeal is allowed to the extent indicated above. The 2nd respondent is directed to pay the said enhanced compensation to the claimants, with interest at the rate of 7.5%per annum from the date of petition till the date of realization. If any

amount is already paid by the 2nd respondent, it shall be given credit as against the total compensation awarded. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

M.S.K. Jaiswal,J.

Dt.13.06.2017
Kv

HON'BLE SRI JUSTICE M.S.K.JAISWAL

MACMA No. 1389 of 2010

Dated: 13.06.2017

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