

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.3122 of 2007

JUDGMENT : (per the Hon'ble Sri Justice C.Praveen Kumar)

Assailing the Order dated 31st August, 2007 in O.P.No.2676 of 2005 on the file of the III Additional Chief Judge-cum-Motor Accident Claims Tribunal, City Civil Court at Hyderabad, wherein the claim for compensation of Rs.29,42,000/- made under Section 166 of Motor Vehicles Act, was allowed in part awarding compensation of Rs.4,02,900/- to claimants against respondents-RTC jointly and severally with interest @ 7.5% per annum, the present appeal is filed by appellants-claimants, seeking enhancement of the compensation.

2. The circumstances which led to filing of the appeal are as under :

As per the averments in the claim petition, filed under Section 166 of the Motor Vehicles Act, the deceased was an auto driver and was also doing business in cloth. On 24.8.2005, while he was driving the passenger auto bearing No.AP 13W 1690, owned by him, a RTC bus bearing No.AP 11 Z 4896, coming from opposite direction hit the auto driven by the deceased leading to his death. As per the averments, the deceased was aged about 32 years and was earning

Rs.8,000/- per month at the time of accident. The first claimant is the mother, the second claimant is the widow and the claimants 3 and 4 are the children of the deceased.

3. A counter came to be filed opposing the claim. As per the counter filed by respondents-RTC, no accident has occurred due to rash and negligent driving of the driver of the bus and as such, claimants are not entitled to any amount.

4. In support of their case, the claimants examined P.Ws.1 to 3 and got marked Exs.A1 to A6. No oral or documentary evidence was adduced on behalf of respondents.

5. After analysing the evidence on record, the Tribunal awarded compensation of Rs.4,02,900/- as against the claim of Rs.29,42,000/-. Challenging the same, the present appeal came to be filed.

6. Learned counsel for appellants-claimants mainly submits that the trial Court erred in taking the income of the deceased at Rs.3,000/- per month. According to claimants, the deceased was eking out his livelihood not only as driver of the auto, but was also doing cloth business. In view of the above, he would submit that the income of the deceased as assessed by the trial Court is on a lower side. He would further submit that though there are more than three claimants, the trial Court erred in deducting $1/3^{\text{rd}}$ towards personal expenses of the

deceased, which is contrary to the judgment of the Apex Court in *Sarla Verma v. DTC*¹. He also contends that the proper multiplier should have been '16' and not '15.87' as adopted by the trial Court. He would also submit that in view of the latest constitutional bench judgment of the Apex Court in *National Insurance Company Limited v. Pranay Sethi and Others*: SLP (Civil) No.25590/2014, decided on 31.10.2017, the claimants are entitled to substantial amounts towards loss of estate, funeral charges and loss of consortium. He also pleads that claimants are also entitled for the loss of future prospects, having regard to the fact that the deceased was also a businessman and earning substantial amounts through his business.

7. The same is opposed by the learned standing counsel for RTC. The main objection raised by the learned standing counsel for respondents is that as the appeal filed by RTC, vide judgment dated 23.3.2011 in M.A. C.M.A. No.223 of 2008 the findings of the trial Court were confirmed, while reducing the rate of interest from 7.5% to 6% per annum, the request of the appellant herein cannot be accepted.

8. It is not in dispute that the RTC has filed an appeal against the judgment, which is also under challenge in this appeal. It is also not in dispute that the present appeal came to be filed much prior to filing of M.A. C.M.A. No.223 of 2008. The counsel for claimants in both appeals are different, but, the counsel for the RTC never brought

¹ (2009) 6 SCC 121

to the notice of the Court about filing of appeal seeking enhancement, when the matter filed by them came up for hearing. No reasons are forthcoming from the standing counsel as to why he has not brought to notice of this Court about filing of appeal seeking enhancement. His argument appears to be that since the Court categorically held that there is no illegality or infirmity in the order passed by the trial Court, no relief can be granted to claimants in this appeal.

9. We are not in agreement with the arguments advanced by the learned standing counsel for respondents-RTC. The said case was filed by the RTC questioning the very grant of compensation in spite of the fact that there is no documentary evidence with regard to earnings of the deceased. Under those circumstances, the Court found that in view of the evidence on record, findings arrived at by the trial Court warrant no interference. But, in the present appeal, learned counsel for appellants mainly submit that the trial Court has not properly appreciated the evidence on record while assessing the income of the deceased. According to him, the deceased herein is a driver-cum-owner of the vehicle and as such, the amount which was earned by him by plying the auto, would be definitely more than what has been taken into consideration by the trial Court.

10. It is no doubt true that there is no documentary evidence to show as to the income earned by the deceased, but definitely having

regard to the fact that the deceased was a driver-cum-owner of the vehicle and since he himself was driving the vehicle in pursuit of his employment, an amount of Rs.3,000/- fixed by the trial court appears to be on lower side. Hence, by taking into consideration the period during which the incident has happened and the facts in issue, the income of the deceased can be raised from Rs.3,000/- to Rs.4,000/- per month.

11. Coming to the plea of appellants that the trial Court erred in deducting $\frac{1}{3}^{\text{rd}}$ towards personal living expenses of the deceased and also fixing the multiplier at '15.87' while calculating the compensation, it is to be noted that the Apex Court in *Sarla Verma's case* (supra) categorically held that where the claimants are between 4 to 6 members, the deduction to be made towards personal living expenses of the claimant would be $\frac{1}{4}^{\text{th}}$ and not $\frac{1}{3}^{\text{rd}}$ which is not seriously disputed by the learned counsel for respondents.

12. Coming to the multiplier to be adopted for calculating the loss of earnings, the deceased at the time of accident was aged 32 years which fact is also not disputed by the learned counsel for respondents. Therefore, the appropriate multiplier to be adopted for calculating loss of earnings would be '16' as per *Sarla Verma's case* (supra). Though the learned counsel for appellants tried to contend that the deceased was also a skilled self-employed person earning money by doing business, we are not in agreement with the same. A perusal of the evidence of P.W.3 would show that the deceased used to help his

mother in cloth business by bringing cloth from wholesaler. It would mean that he was only transporting the goods from the wholesaler. His evidence does not anywhere indicate that he was earning any money while assisting his mother. Therefore, the plea that he was self-employed and that he is entitled for future prospects cannot be accepted.

13. Having estimated the monthly income of the deceased at Rs.4,000/-, the annual income comes to Rs.48,000/- and after deducting 1/4th towards the personal expenditure of the deceased, the loss of dependency should be Rs.36,000/- (48000 – 12,000) per annum and by applying multiplier '16', the compensation comes to Rs.5,76,000/-, which is the loss of dependency to claimants – appellants on account of the death of the deceased.

14. The counsel for appellants further submits that in view of the recent judgment of the Apex court in *Pranay Sethi's case* (supra) the claimants are entitled for loss of estate, loss of consortium and funeral expenses at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The trial Court in its order granted a sum of Rs.10,000/- towards loss of estate; Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses. In view of the Constitutional Bench Judgement, the loss of estate is enhanced from Rs.10,000/- to Rs.15,000/-, while the loss of consortium is enhanced from Rs.10,000/- to 40,000/- and funeral expenses from Rs.2,000/- to Rs.15,000/-.

15. In view of the above, the total compensation which the appellants are entitled to would be Rs.6,46,000/- (5,76,000 + 15,000 + 40,000 + 15,000). The enhanced compensation will receive an interest of 6% per annum from the date of petition till the date of realization with proportionate costs against respondents 1 and 2 jointly and severally. Respondents 1 and 2 are directed to deposit the said amount after adjusting the amount if any already deposited or paid within a period of one month from the date of receipt of a copy of the order.

16. The award is apportioned among the claimants awarding Rs.1,20,000/- to the 1st claimant, she being mother of deceased and Rs.2,06,000/- to the 2nd claimant, she being wife of the deceased and Rs.1,60,000/- each to claimants 3 and 4, being the daughters of deceased with proportionate costs and interest.

17. On deposit of the compensation, claimants are permitted to withdraw their respective shares.

18. Advocate fee is fixed at Rs.2,500/-.

19. Accordingly, the appeal is allowed in part. There shall be no order as to costs.

20. Consequently, miscellaneous petitions pending, if any, in this appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

23rd November, 2017

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