THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2017 OF 2004

JUDGMENT:

Not being satisfied with the quantum of compensation awarded in M.V.O.P. No.300 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Kadapa (for short, 'the Tribunal), the claimants, who are the wife and children of the deceased, preferred the present appeal seeking enhancement of the same.

2. Heard Sri K. Murali Krishna, the learned counsel for the appellants, Sri U.Pratap Rao for Sri Kota Subba Rao, the learned counsel for the 2nd respondent Insurance Company, and perused the material available on record. The appeal against respondent No.1 is dismissed for default vide Court order dated 14.7.2016.

3. For the sake of convenience, the parties hereinafter will be referred to as arrayed before the Tribunal.

4. The facts in issue are as under:

The claimants herein filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- for the death of one Myla Siddaiah on 25.09.2001. It is stated that on the fateful day when the deceased was proceeding on foot on the left side of the road on his way from Yerramguntla to Vempalli and when he reached Chamuru Ganuga mill, the offending Tractor bearing Regn. No.AP-27-B-2086 belonging to 1st respondent and insured with

2nd respondent came with high speed and in a rash and negligent manner and hit the deceased causing him fatal injuries. Immediately, he was shifted to Government Hospital, Proddatur, and therefrom to General Hospital, Kurnool, where he succumbed to injuries on the next day at about 10.40 p.m. In respect of the above incident, a case in Crime No.98 of 2001 of Yerraguntla Police Station was registered. It is stated that the deceased was aged about 55 years, and hale and healthy at the time of the accident. He was working as Junior Assistant in M.D.O.'s office, Yerraguntla, drawing a monthly salary of Rs.7,630/-. Since the accident took place due to rash and negligent driving by the driver of the crime vehicle, the claimants filed M.V.O.P. No.300 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Kadapa, claiming compensation of Rs.5,00,000/- for the death of the deceased in the said accident.

5. Though, the 2nd respondent - Insurance Company filed counter resisting the request, the 1st respondent filed counter admitting the accident and employment of the deceased and the salary mentioned in the claim petition. The only plea raised was that since the vehicle was insured with the 2nd respondent there is liability on the part of the 2nd respondent to indemnify and on that ground exonerated him.

6. Basing on the above pleadings, the Tribunal below framed the following issues:

(1) Whether the accident occurred due to rash and negligent driving of Tractor Mahendra bearing No.AP-27-B-2086 by its driver?
(2) Whether the petitioners are entitled for compensation and if so to what amount and from whom?
(3) To what relief?

7. In support of the claimants, P.Ws.1 and 2 were examined and Exs.A-1 to A-6 documents were marked. No oral or documentary evidence has been adduced on behalf of the respondents.

8. After considering the oral and documentary evidence available on record, what all the Tribunal did on Issue No.2 is taking salary of the deceased at Rs.7,630/- as per Ex.A6 – Salary Certificate and deducted one-third thereof towards personal expenses and taken the age as '55 years', and keeping in view that he was an employee and would be getting revision of pay, D.A., accordingly, assessed at Rs.10,000/- towards monthly earnings and arrived at Rs.1,93,120/-. Besides the same, the Tribunal granted to the wife of deceased a sum of Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.2,000/- towards transportation charges, thus totalling to Rs.2,27,120/- with interest at 9% p.a. from the date of petition till the date of realization.

9. In the Appeal, Sri K. Murali Krishna, the learned counsel for the appellants would submit that the Tribunal below did not look into multiplier factor basing on second schedule to Section 163-A of the Act and arrived at a meager sum and that the tribunal ought not to

have deducted one-third towards personal and living expenses and thereby sought to grant balance amount.

10. Learned counsel for the appellants further submits that the amount awarded by the Tribunal is on lower side, and hence, seeks enhancement of the same. According to claimants, the Tribunal did not take into consideration the future prospects of the deceased, who was working as Junior Assistant in the office of Mandal Parishad Development Officer. It is further contended that the tribunal erred in deducting 1/3rd towards his personal and living expenses. He further submits that in view of the judgment of the Apex Court reported in **Sarla Verma v. Delhi Transport Corporation**[1], suitable multiplier to be adopted for calculating the loss of dependency is '11' and not '8' as done by the tribunal.

11. The learned Standing counsel for the 2nd respondent did not dispute the age and also the earnings of the deceased. Per contra, he would submit that the amount of compensation awarded by the Tribunal is just and reasonable and as such the same warrant no interference by this Court.

12. Since the deceased was drawing salary of Rs.7,630/- as on the date of accident, his annual income would work out to Rs.91,560/- (Rs.7,630/- x 12 months). If one-third is deducted towards his personal and living expenses, the contribution of the deceased to the family was Rs.61,040/- (Rs.91,560/- - Rs.30,520/-).

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[1] 2009 ACJ 1298 (SC)

Since the age of the deceased in the present case was about 55 years at the time of accident and as he was employed with fixed salary, the relevant multiplier is "11" in view of the decision of the Apex Court in **Sarla Verma** (1 supra). The total loss of dependency would, therefore, works out to Rs.61,040/- x 11 = Rs.6,71,440/-.

13. As the deceased was permanent employee working in MDO's office in the cadre of Junior Assistant, 15% towards future prospects is to be granted as laid down in **Rajesh v. Rajbir Singh**[2], though there has been reference in regard thereto pending before the larger Bench of the Hon'ble Supreme Court. Thus, the claimants are entitled to Rs.1,00,716/- towards future prospects. Besides the same, the petitioners are also entitled to Rs.50,000/- towards conventional sum in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[3]. Thus, the claimants are entitled to a sum of Rs.6,71,440/- + Rs.1,00,716/- + Rs.50,000/- = Rs.8,22,156/- as compensation, which is more than the amount originally claimed by the claimants.

14. The learned Standing Counsel for the Insurance Company would submit that since the claim of the appellants is only for Rs.5,00,000/- the amount arrived at be restricted to the claim, but the said argument cannot be accepted for the reason that when just compensation has to be determined in accordance with the provisions

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[2] (2013) 9 SCC 54
[3] 2014 ACJ 1430

of the Act, the amount to which the petitioners are entitled to, certainly, cannot be deprived in view of the rulings of the Hon'ble Supreme Court.

15. In ***Nagappa v. Gurudayal Singh***[4], the question as to whether the claimants are entitled to compensation in excess of what is claimed in the petition under Section 166 of the Motor Vehicles Act came up for consideration. The Apex Court held as under:

> "**Para 21.** For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit the amendment to the claim petition."

The said principle was followed in later decisions by the Apex Court in ***Oriental Insurance Company Limited v. Mohd. Nasir*** (2009) 6 SCC 280; ***Ningamma v. United India Insurance Company Limited*** (2009) 13 SCC 710 and also in ***Rajesh v. Rajbir Singh*** (2 supra).

16. As held by the Apex Court in ***Rajesh*** (2 supra), the Court should not succumb to niceties or technicalities in fixing the compensation. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation

[4] (2003) 2 SCC 274

so that the injured/dependants should not face vagaries of life on account of the discontinuance of the income earned by the victim.

17. In view of the judgments referred above and also taking into consideration the application filed by the claimants with regard to enhancement of compensation, I am of the view that the claimants are entitled to more than what has been claimed by them.

18. For the reasons aforementioned, the Appeal is allowed in part. The compensation of Rs.2,27,120/- (Rupees Two lakhs Twenty seven thousand one hundred and twenty only) as awarded by the Tribunal is enhanced to Rs.8,22,156/- (Rupees Eight lakhs twenty two thousand one hundred and fifty six only) to be paid by the respondents 1 and 2 with joint and several liability. The rate of interest at 9% p.a. granted by the tribunal on Rs.2,27,120/- shall be maintained, and the enhanced amount of Rs.5,95,036-00 will carry interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. Out of the said amount, 1st claimant, who is wife of the deceased, is entitled to Rs.4,00,000/- and the claimants 2 and 3 are entitled to for the remaining amount in equal proportion. There shall be no order as to costs.

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

A. SHANKAR NARAYANA,J

7th August, 2017
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