THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.462 of 2014

JUDGMENT:

This appeal is arising out of the Order and Decree dated 13.01.2011 passed in O.P.No.337 of 2008 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Adilabad, (for short, 'the Tribunal'), granting compensation of Rs.1,20,000/- to the petitioners on account of the death of one kali Prasad Singh in a motor vehicle accident that occurred on 01.04.2008, while the deceased was going on his cycle to his house, and on being dashed by a lorry bearing No.MP-04K-5068, driven by its driver in a rash and negligent manner.

2. Brief facts of the case are that, on 01.04.2008, the deceased Kali Prasad Singh, who was 39 years old, and working as a labourer in Balaji Engineering Works, Kagaznagar, was proceeding to his house on his cycle, and when he reached Jajubabu chowk at about 6:15 p.m., the offending lorry driven by its driver in a rash and negligent manner, dashed the deceased and the rear wheels of the lorry ran over the head of the deceased resulting in his instantaneous death. The Kagaznagar Police registered a case against the driver of the offending lorry for the offence punishable under Section 304-A IPC. The petitioners are dependent on the deceased, and therefore they filed a claim

petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,50,000/- against respondents 1 and 2, the owner and insurer of the offending lorry.

3. The Tribunal, on consideration of the evidence of PWs.1 and 2, and the documents Exs.A1 to A6, adduced on behalf of the petitioners, awarded compensation of Rs.1,20,000/- with interest at 8% per annum from the date of petition till realisation, holding respondents 1 and 2 jointly and severally liable for payment of compensation.

4. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners-claimants filed this appeal seeking enhancement of compensation.

5. The point for consideration in this appeal is whether the appellants-claimants are entitled for enhancement of compensation?

6. Heard the arguments of Sri S. Surender Reddy, learned Counsel for appellants-claimants; and Smt. P. Satya Manjula, learned Standing Counsel for the insurance company.

7. Learned counsel for the appellants mainly contended with regard to income of the deceased, application of Multiplier and award of compensation under other heads.

8. In fact, Ex.A5 shows that the deceased worked as a contract labourer for 22 days in the month of January 2008 in Balaji Engineering Works, and his salary was Rs.2,332/- which comes to Rs.106/- per day. Therefore, the Tribunal has taken the notional income of the deceased as Rs.3,000/- per month as there was no proof of income. In view of the ratio laid down by the Apex Court in ***Ramesh Singh v. Satbir Singh***[1], ***New India Assurance Company Ltd. v. Smt. Shanti Pathak***[2], ***Oriental Insurance Co. Ltd. v. Syed Ibrahim***[3], ***New India Assurance Co. Ltd., v. Kalpana (Smt)***[4], a decision of High Court of Karnataka at Bangalore in ***Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager***[5] and a decision of High Court of Calcutta **in *United India Insurance Co. Ltd. v. Shri Buro Mahara***[6], the notional income of a person working as a labourer in an unorganized sector can be taken into consideration as Rs.3,000/- per month. Therefore, the Tribunal has rightly taken the notional income of the deceased as Rs.3,000/- in the absence of any evidence of proof of income, and the same does not require any interference.

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[1] MANU/SC/7089/2008
[2] MANU/SC/7776/2007
[3] MANU/SC/7915/2007
[4] (2007) 3 SCC 538
[5] MANU/KA/3721/2013
[6] MANU/WB/0139/2015

9. Learned counsel for the appellants placed reliance in the recent judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and Others[7],** and contended that the deceased was 39 years old by the date of accident and, therefore, claimants are entitled to future prospects at the rate of 40% of his salary. In the instant case, the deceased was 39 years old by the date of accident, and was earning Rs.3,000/- per month as a labourer in Balaji Engineering Works, which is a private firm. Therefore, as per the ratio laid down in **Pranay Sethi**, it would be appropriate if 40% of the salary is taken into consideration as future prospects of the deceased for the purpose of calculation of compensation. Therefore, by adding 40% of the salary, the total monthly salary of the deceased would come to Rs.4,200/-.

10. The other contention of the learned Counsel for the appellants is with regard to the Multiplier for assessment of loss of dependency. In the light of the judgement of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation[8],** the multiplier applicable to the age of the deceased, who was 39 years by the date of accident, is '15'. Further, as the deceased was a bachelor by the date of accident, 50% of his income has to be deducted towards his personal expenses. Therefore, taking into consideration his

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[7] 2017 (13) SCALE 12 = MANU/SC/1366/2017

[8] AIR 2009 SUPREME COURT 3104

monthly salary as Rs.4,200/-, and deducting 50% towards his personal expenses, the monthly salary of the deceased for the purpose of calculation of compensation would come to Rs.2,100/-. Applying multiplier '15', the loss of dependency would come to Rs.2,100 x 12 x 15 = Rs.3,78,000/-.

11. Per contra, the learned counsel for the respondent-insurance company has also placed reliance on **Pranay Sethi** and contended that the petitioners are not entitled for any compensation separately under the Head 'love and affection'. Learned counsel for the respondent has drawn attention to Clause (viii) in Paragraph No.61 of **Pranay Sethi** which reads as under:

> **"(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."**

12. Learned Standing Counsel for the respondent further contended that the Tribunal has awarded interest at 8% per annum which is very high, whereas the prevailing rate of interest is 7.5% per annum and, therefore, requested to reduce the rate of interest to 7.5%.

13. Learned counsel for the respondent-insurance company further contended that in **Pranay Sethi,** the Apex Court has fixed reasonable figures on conventional Heads, comprising of

loss of estate, loss of consortium and funeral expenses. And, therefore, a maximum of Rs.15,000/- can be awarded towards loss of estate and, hence, the amount of Rs.25,000/- awarded by the Tribunal towards loss of love and affection, requires to be reduced.

14. The contention of the learned counsel for the respondent-insurance company for reduction of compensation of Rs.25,000/- awarded by the Tribunal under the Head of loss of love and affection cannot be countenanced, for the reason that though the Tribunal has awarded Rs.25,000/- towards loss of love and affection, it has awarded Rs.5,000/- towards funeral expenses, thus totalling a sum of Rs.30,000/- under the conventional Heads. Even by applying the ratio laid down in the judgment in **Pranay Sethi,** the petitioners are entitled for compensation of Rs.15,000/- towards loss of estate, and Rs.15,000/- towards funeral expenses, which again totals to Rs.30,000/- and, therefore, there is no need to interfere with the findings of the Tribunal in awarding Rs.25,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses, as it awarded Rs.30,000/- in all, under the conventional Heads. Further, the rate of interest of 8% per annum awarded by the Tribunal, though argued to be on a higher side, does not appear to be very high, in the facts and circumstances of the present case, and, therefore, the same does not require any interference.

15. This is a case of collision of a cycle and a lorry. The deceased was a labourer working in a private firm, Balaji Engineering Works, and earning Rs.3,000/- per month. He was 39 years old by the date of accident. The claimants herein are the father and sister of the deceased. The 1st petitioner was 70 years old, and the 2nd petitioner was 30 years, by the date of accident and they were dependent on the deceased. Due to the untimely death of the deceased, the appellants lost their sole support in their twilight years. In view of the evidence available on record and the facts and circumstances of the case, and also the recent judgment of the Hon'ble Apex Court in **Pranay Sethi,** which laid down the ratio of adding 40% of salary towards future prospects of the deceased, and also the judgment of the Apex Court in ***Nagappa Vs. Gurudayal Singh***[9]**,** which permits the Courts to award 'just and reasonable' compensation, in appropriate cases, the only embargo being that it should be 'just' compensation, and not arbitrary, fanciful, or unjustifiable from the evidence; the appellants-claimants are entitled for a total compensation of Rs.4,08,000/- with interest at 8% per annum.

16. **In the result,** the appeal is allowed in part enhancing the compensation awarded by the Tribunal from Rs.1,20,000/- to Rs.4,08,000/- with interest of 8% per

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[9] 2003 (2) SCC 274

annum from the date of petition till realization. The respondents are directed to deposit the amount of compensation within two months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the same. The appellants are directed to pay the Court fee for the compensation awarded over and above the compensation claimed in the Original Petition. There shall be no order as to costs. Miscellaneous Petitions, if any, pending shall stand closed.

GUDISEVA SHYAM PRASAD, J.

14th November, 2017
Gnr/ksm

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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