THE HON'BLE MR JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE MR JUSTICE N.BALAYOGI

MACMA NO.2672 OF 2006
AND
CROSS OBJECTIONS (SR) No.2230 OF 2007

COMMON JUDGMENT: (Per Hon'ble Sri C.Praveen Kumar)

Assailing the Award dated 04.09.2006, passed in O.P.No.675 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari District, Eluru (hereinafter referred to as ' the Tribunal), wherein an amount of Rs.36,32,000/- was Awarded as compensation with proportionate costs and interest thereon @ 7.5% per annum, the Oriental Insurance Company Limited (hereinafter referred to as 'insurance company'), preferred the present appeal.

2) Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants filed cross-objections, seeking enhancement of compensation.

3) For the sake of convenience, the parties will hereinafter be referred to as shown in the O.P.

4) The facts as stated in the claim petition are as under:

i) An application under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act') came to be filed by the four claimants seeking compensation of Rs.60,00,000/- for the death of deceased Atluri Ramesh in a road accident.

ii) The first claimant is the wife, the second and third claimants are minor sons and the 4th claimant is the mother of the deceased. The deceased was hale and health, aged about 35 years and was earning 1000 Oman Riyals equivalent to Rs.1,27,000/- per month, as a Dental Surgeon and consultant in Wilayat Sultanate of Oman, Muscat country.

On the date of accident, the deceased was earning Rs.40,000/- per month as Dental Surgeon in City Dental Care at Vijayawada.

iii) On 19.05.2002 at about 06.30 a.m., while the deceased was traveling along with his two minor sons and grand mother Suguna in a car bearing No.A.P.31W 4646 and when the said vehicle reached Kurellagudem village on N.H.5 road, a lorry bearing No. OR 07A 7191 driven by its driver at high speed and in a rash and negligent manner dashed against the car. As a result of which, the deceased and his grand mother died on the spot and his two minor sons sustained severe injuries all over the body. It is further stated that the deceased earned substantially till 1996 by establishing dental clinic at Machilipatnam; worked at Muscat from 1996 to 2001 and that possessed landed property of Ac.09.68 cents, for which he is getting Rs.1,45,200/- per annum by cultivating the said land. The deceased spent 57,353 dollars for the first petitioner and 5400 dollars for the second petitioner to reside with her mother and he was also planned to go to USA. The father of the deceased died one week after the accident and his mother, who fell sick is bed ridden. Hence, the claimants estimated compensation of Rs.1,22,40,000/-, but claimed Rs.60,00,000/-. It is pleaded that as both the vehicles are having valid insurance and that the drivers of the vehicles are having valid driving license, respondents 1 to 6 are jointly and severally liable for payment of compensation.

5) Respondents 1, 2, 4 and 5 remained exparte. Respondent No.3 filed written statement, disputing the manner in which the incident took place, the income of the deceased, the future prospectus, arrangements for the study of the 1st petitioner etc. It is said the accident did not occur due to rash and negligent driving of the lorry driven by its driver and that the car was proceeding slowly and cautiously on the extreme left side of

the road and that the accident is a head on collusion. The claimants have to prove that the drivers of the vehicles are having valid documents at the time of accident. It is further urged that the compensation claimed by the claimants is high and exorbitant. Hence, requested to dismiss the claim petition.

6) The 6th respondent filed written statement denying the allegations made in the claim petition.

7) Basing on the evidence available on record, the Tribunal framed the following issues:

1) Whether the accident had occurred due to rash and negligent driving of the lorry bearing No.OR 07A 7191 by its driver – the 1st respondent?
2) Whether the petitioner is entitled to claim any compensation, if so to what amount against all respondents?
3) To what relief?

8) In support of the claim, the claimants, examined PWs.1 to 3 and got marked Exs.P.1 to P.28. On behalf of the respondents, RW.1 was examined and Exs.B.1 to B.3 were marked.

9) After considering the evidence available on record, the Tribunal partly allowed the claim of the claimants in directing respondents 1 to 3 to pay Rs.36,32,000/- jointly and severally to the claimants taking the monthly income of the deceased at Rs.25,000/- per month; adopting multiplier '18'; deducting 1/3 towards personal expenses; and granting Rs.15,000/- towards loss of estate, Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses.

10) Learned counsel for the insurance company mainly urged that the Tribunal erred in adopting multiplier '18' instead of '16' as per **Sarala**

Verma (SMT) and others v Delhi Transport Corporation and another[1]**.** He would further submit that there was no basis for the Tribunal to fix the income of the deceased at Rs.25,000/- per month, since no income certificate has been placed on record to show the earnings of the deceased. Hence, pleaded that the quantum of compensation awarded by the Tribunal is illegal and improper and the same requires to be reconsidered.

11) On the other hand, learned counsel for the claimants, who has also filed cross objections, submits that the Tribunal erred in deducting 1/3rd towards personal expenses when there were four dependents. According to him, as per the Judgment of the Apex Court in **Sarala Verma** referred supra, 1/4th has to be deducted towards personal and living expenses of the deceased. He would also submit that in view of the recent judgment of the Constitution Bench in **National Assurance Company Limited v Pranai Sethi and others** (SPECIAL LEAVE PETITION (CIVIL) NO. 25590 OF 2014, dated 31.10.2017) the claimants are entitled to more amounts towards loss of consortium, estate and funeral expenses.

12) From the arguments advanced above, it is clear that there is no dispute with regard to the accident, which took place on 19.05.2002, the claimants being the legal heirs of the deceased. The dispute raised is only with regard to the income of the deceased and the multiplier adopted.

13) Coming to the income of the deceased, it is not in dispute that the deceased was working as a dentist in a Super Specialty Hospital at Benz Circle, Vijayawada. Prior to coming to Vijayawada, the deceased worked

[1] (2009) 6 SCC 121

as a dentist in an organization at Muscat. To prove the same, he placed on record a copy of licence, which is marked as Ex.A.11, dated 01.06.2000. Ex.A.13 is the certificate issued by Sait Salsem Saif Al Sanani, dated 30.06.2001. Ex.A.14 is the abstract of Bank at Muscat. Ex.A.15 is the statement of account of the deceased. Particulars of D.D transaction history issued by HSBC Bank etc. were marked as Ex.A.16. In order to prove the transaction with regard to the purchase of a car by the deceased from car marketing company at Oman, Exs.A.20 and A.21 were marked. The telephone charges and the bill details of the deceased were placed on record and the same were marked as Exs.A.22 and A.23.

14) Having regard to the fact that these documents are not legally proved, the Tribunal felt that the same cannot be taken as true and genuine. But however, as per evidence of PW.3, he was running a private hospital under the name and style of City Super Specialty Dental Clinic, Benz Circle, Vijayawada and also deposed that he know the deceased by name Atluri Ramesh from child hood as he was one year junior to him and worked at Muscat from 1996 to 2001. After returning from Oman he joined in his hospital and used to conduct Dental Surgeries. According to him, the deceased used to receive Rs.50,000/- per month as income. PW.3 admits issuance of Ex.P.9. In his cross examination, he admits that the deceased used to work in City Super Specialty Dental Clinic at Benz Circle, Vijayawada. Though he claims to have stated in his evidence in chief that the deceased used to receive Rs.50,000/- per month, but failed to place on record any document to prove the same.

15) Having regard to the above, it cannot be said that the deceased was not having any income as a dentist at Vijayawada. It has come on record that a Government Dental Doctor, for the said period was paid

Rs.18,000/- to Rs.20,000/- per month. That being the position, fixing the income of the deceased, who was a private doctor at Rs.25,000/- per month, can be said to be on a higher side. In the absence of any evidence as to the income and in the absence of any income tax return to show the income, we feel that it would be just and proper to fix the income of the deceased at Rs.20,000/- per month.

16) If the income of the deceased is taken at Rs.20,000/-, the annual income of the deceased will be around Rs.2,40,000/-. At this stage, it is to be noted that the Tribunal did not take into consideration the future prospectus of the deceased. Admittedly, the deceased was aged about 35 years having a bright future as a dentist. In "**Pranai Sethi"** referred to above, the Constitution Bench held as under:

> *"In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

17) Since the deceased was aged about 35 years and having fixed income, 40% of actual salary should be added to the actual income of the deceased for the purpose of calculating the loss of dependency. If the income of the deceased is taken at Rs.20,000/-, the annual income of the deceased comes to Rs.2,40,000/-. If 40% of it is added to the income, the same comes to Rs.2,40,000/- + 96,000/- = Rs.3,36,000/-.

18) Though the dependents are four in number, the Tribunal deducted 1/3rd towards personal expenses. We feel that the methodology adopted by the Tribunal in deducting 1/3rd though there are four dependents on

the deceased is contrary to the ratio laid down by the Apex Court in **Sarala Verma** case referred supra, which was approved by the Constitution Bench in '**Pranai Sethi'**. Therefore, if 1/4th of income is deducted towards personal expenses of the deceased, the contribution to the family would be Rs.2,52,000/- per annum. According to learned counsel for the insurance company, the multiplier '18' adopted by the Tribunal as per the age of the deceased i.e. 35 years is incorrect and as per **Sarala Varma** case referred supra, the suitable multiplier would be '16'. The said fact is not seriously disputed. Applying multiplier '16', the loss of dependency would be Rs.2,52,000/- x 16 = 40,32,000/-. Apart from that the claimants are also entitled Rs.70,000/- towards conventional heads namely, loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-) in view of the judgment of the Apex Court in '**Pranai Sethi'**. Thus, in all the claimants are entitled to Rs.41,02,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till the date of realization.

19) Accordingly, the appeal is dismissed and the cross-objections filed by the claimants are partly allowed. There shall be no order as to costs.

Miscellaneous petitions if any pending in this appeal shall stands dismissed.

C.PRAVEEN KUMAR, J

N.BALAYOGI, J

Date: 14.12.2017
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