

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A No.1979 of 2010

JUDGMENT:

This is an appeal by the claimant injured.

2. The appellants herein are the legal representatives of the deceased B.Madhu Kumar. They filed MVOP.No.2577 of 2008 on the file of the XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad (for short, the Tribunal) seeking compensation of Rs.15,00,000/- lakhs on account of the death of B.Madhu Kumar in a motor vehicle accident occurred on 04.10.2008 in Hyderabad and the Tribunal has awarded the same amount.

3. The appellants, having not satisfied with the award of the Tribunal granting Rs.15 lakhs, have approached this Court for enhancement of compensation on two grounds. The first ground is that the Tribunal assessed the compensation and arrived at a figure of Rs.18,17,000/-, but restricted the same to Rs.15,00,000/-. Therefore, the appellants claim the balance amount of award. They also claim for enhancement of consortium and funeral expenses.

4. The points for consideration in this matter are:

- (i) Whether the appellants are entitled for amount of Rs.18,17,000/- as assessed by the Tribunal, which was restricted to Rs.15,00,000/-?; and
- (ii) Whether the appellants are entitled for enhancement of compensation amount towards consortium and funeral expenses?

5. At the outset, this is an appeal by the claimants. The contention of the claimants is that the Tribunal has assessed the just compensation and arrived at Rs.18,17,000/- on account of the death of the deceased in the accident, but it was restricted the amount to Rs.15,00,000/-, which is required to be enhanced to the amount already assessed by the Tribunal. The other contention is that the Tribunal has awarded Rs.15,000/- towards consortium and Rs.2,000/- towards funeral expenses which need to be enhanced.

6. Heard the arguments of learned counsel for the appellants Sri Jagathpal Reddy Kasireddy and learned Standing Counsel for the respondents Sri Sunil Kumar Reddy.

7. Learned counsel for the appellants relying on Full Bench decisions of the Apex Court in **Rajesh v. Rajbir Singh**¹ and **Nagappa v. Gurudayal Singh**² submitted that though the just compensation exceeds the claim of the appellant, it is the duty of the Tribunal to award the same. It is also submitted that the compensation towards consortium and funeral expenses are to be awarded adequately. He placed reliance on paragraphs 20 and 21 of judgment in **Rajesh**'s case (1 supra), which read as under:

“20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in *Santosh Devi v. National Insurance Co. Limited* (MANU/SC/0322/2012). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It

¹ 2013 ACJ 1403

² AIR 2003 SC 674

may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In *Sarla Varma (Smt.) v. Delhi Transport Corporation* {(2009) 6 SCC 121}, it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdiction, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.

21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'funeral expenses'. The 'Price Index', it is a fact, has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or the fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000."

8. Learned counsel for the appellants relying on a Division Bench decision of the Apex Court in **Kala Devi v. Bhagwan Das Chauhan**³, submitted that the Apex Court awarded loss of

³ 2014 ACJ 2875

consortium at Rs.1,00,000/-, funeral expenses at Rs.25,000/- and loss of estate at Rs.1,00,000/-.

9. Learned counsel for the respondents placed reliance on a Full Bench of the Apex Court in **Ramilaben Chinubhai Parmar v. National Insurance Co.**⁴ and submitted that the Apex Court awarded conventional amount of Rs.50,000/- which includes all other heads like loss of consortium, loss of estate and funeral expenses and required to award that amount accordingly.

10. On consideration of the submissions of the learned counsel for both the parties, and the decisions submitted by them, this Court is of the considered view that the appellant is entitled for the compensation of Rs.18,17,000/-. The findings of the Tribunal restricting the claim at Rs.15,00,000/- is without any basis. In the light of the decisions of the Apex Court in **Rajesh's** case (1 supra) and **Nagappa's** case (2 supra), the Tribunal is expected to award just compensation. The Tribunal has properly assessed the compensation in this case, but without any reasons, has restricted the compensation amount to Rs.15,00,000/- only on the ground that the claim was only Rs.15,00,000/-. Though the claimant makes a claim to a certain amount, the Tribunal can award more than the claim amount, if it is reasonable and just compensation. Therefore, the compensation awarded by the Tribunal of Rs.15,00,000/- has to be enhanced to Rs.18,17,000/-.

⁴ LAWS(SC)-2014-4-67

11. The Tribunal has awarded Rs.15,000/- towards compensation and Rs.2,000/- towards funeral expenses. In the light of the decision of the Apex Court in **Ramilaben Chinubhai Parmar**'s case (4 supra), this Court is of the considered view that an amount of Rs.50,000/- would meet the ends of justice under the heads of loss of consortium, funeral expenses and other conventional expenses, in view of the facts and circumstances of this case. It is pertinent to note that the appellant was working as Police in APSPF by the date of accident. The Tribunal has taken into consideration of his salary and awarded the compensation under various heads, and therefore, there is no need to interfere with the findings of the Tribunal in assessment of quantum of compensation of Rs.18,17,000/-.

12. In the result, the appeal is allowed. The compensation awarded by the Tribunal is modified by enhancing the compensation of Rs.15,00,000/- to Rs.18,50,000/- along with interest @ 7.5% per annum from the date of petition till realization. The appellants are directed to pay the Court fee on the amount awarded over and above Rs.15,00,000/-, within one month from the date of receipt of a copy of this judgment and are permitted to withdraw the entire amount in the proportion as fixed by the Tribunal. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

G.SHYAM PRASAD, J

Date: 14.02.2017
TJMR