HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.247 of 2006

ORDER:

This appeal is arising out of the order and decree dated 07.10.2005 passed in M.V.O.P. No.114 of 2002 passed by the Motor Accident Claims Tribunal-cum-IV Additional District Judge, East Godavari District, Kakinada.

2. The appellants are the legal representatives of the deceased, Pepakayala Murali Veera Venkata Satyanarayana @ Murali, who filed the claim petition under Section 166 of M.V. Act claiming compensation of Rs.6,00,000/- with interest at 24% per annum on account death of Murlai in a motor accident occurred on 29.08.2001 at Jagannadhagiri Road near the house of Oduri Chandravathi, Settibalijapeta, Kajuluru Mandal, East Godavari District.

3. On 29.08.2001, while the deceased was going on his Hero Honda Motor cycle bearing No.AP 5M 2600 from his medical shop at Seela Village to his relatives house at Draksharamam and when he reached near Jagannadhagiri, one tractor-cum-trailor bearing No.AP 5M 4967 and AP 5X 4427 driven in a rash and negligent manner by the 1st respondent—driver, dashed against the motor cycle and ran over the head of the deceased and he died on the spot due to crush injury to his head. The deceased was aged about 25 years and his marriage was performed with the 1st petitioner six months prior to the accident. He was running medical shop under the name and style of Sai Medical & General Stores at Seela Village and he was earning Rs.9,000/- per month.

Therefore, the legal representatives of the deceased have claimed compensation of Rs.6,00,000/- against respondent No.1—driver, respondent No.2—owner and respondent No.3—United India Insurance Company, the insurer of the crime vehicle—tractor-cum-trailor.

4. Respondent Nos.1 and 2 filed their counter affidavits denying the allegations made in the petition with regard to their liability. The 3rd respondent filed his counter denying the liability of the insurer. The Tribunal on considering the evidence of PWs.1 to 3 and documents Exs.A1 to A7 viz., Ex.A1—Attested Xerox copy of FIR in Crime No.69 of 2011 of Gollapalem PS, dated 29.08.2001, Ex.A2—Attested Xerox copy of post-mortem report dated 30.08.2001, Ex.A3—Attested Xerox copy of Inquest report and charge sheet dated 29.08.2001, Ex.A4—Certified copy of Diploma in Pharmacy issued to MVV Satyanarayana Pepakayala dated 15.10.1997, Ex.A5—Statement of marks of MVV Satyanarayana Pepakayala in Diploma in Pharmacy dated 09.01.1996, Ex.A6—Attested copy/ certificate of Registration issued by Assistant Commercial Tax Officer dated 23.09.1998, Ex.A7—Driving licence issued to MVV.Satyanarayana Pepakayala and Ex.B1—Certificate of Insurance, has awarded Rs.1,80,000/- with interest at 6% per annum from the date of petition till realisation.

5. Aggrieved by the quantum of compensation, the claimants have preferred this appeal for enhancement of compensation.

6. Heard learned counsel for appellants and learned Standing Counsel for respondent—Insurance Company.

7. Learned counsel for appellants mainly submitted that the Tribunal has taken the income of the deceased at Rs.15,000/- per annum, which is on lower side though he was running Medical and General Stores and earning Rs.10,000/- per month, and the multiplier applied by the Court below is also not correct and the correct multiplier is '18' as per ***Sarla Verma vs Delhi Transport Corporation***[1]. He further submitted that the Tribunal has not awarded loss of consortium, funeral expenses and other expenditure.

8. Learned Standing Counsel for Insurance Company submitted that the Tribunal was awarded adequate compensation by taking the income of the deceased at Rs.15,000/- per year as no proof of income has been filed by the appellants.

9. The point for consideration is whether the appellants are entitled for enhancement of compensation.

10. The appellants are the legal representatives of the deceased Murali, who died in the motor accident dated 29.08.2001. The accident occurred in the public place, out of the use of motor vehicle, the tractor cum trailor bearing No.AP 5M 4967 and AP 5X 4427. The Tribunal held that the driver of the tractor-cum-trailor was liable for the accident and further held that the respondents 1 to 3 are jointly and severally liable for payment of compensation.

11. The 3rd respondent—Insurance Company has not disputed its liability except disputing the quantum of compensation. The

[1] 2009 (6) SCC 121

Tribunal has taken the income of the deceased at Rs.15,000/- per annum as there is no proof of income of the deceased before the tribunal.

12. Learned Counsel for appellants submitted that no proof is produced by the appellants with regard to income of the deceased, however, the Tribunal observing that the deceased was running Medical and General Stores, took notional income of the deceased at Rs.15,000/- per annum, which is on lower side.

13. Though it is the contention of the appellants that the deceased was running a Medical and General Stores, they have not filed any documents like income tax returns or any proof of income of the deceased getting out of the said business. Therefore, the Tribunal has taken the income of the deceased at Rs.15,000/- per annum. No doubt, the income taken by the Tribunal at Rs.15,000/- per annum is on lower side. In view of the decision rendered in the case of ***Ramesh Singh v. Satbir Singh***[2], the notional income of a person working in an organised sector can be taken into consideration as Rs.3,000/- per month for calculation of compensation.

14. In the light of the facts and circumstances of the case, placing reliance on Ramesh Singh (supra) and the income of the deceased can be taken as Rs.3,000/- per month, after deducting 1/3rd towards personal expenses, the contribution to his family comes to Rs.24,000/- per annum. The age of the deceased at the time of accident was 24 years and as per the decision of the Apex

[2] MANU/SC/7089/2008

Court in Sarla Verma (supra) the suitable multiplier is '18'. By applying the said multiplier, the loss of dependency comes to Rs.4,32,000/- (Rs.24,000/- X 18).

15. It is pertinent to note that the Tribunal has not awarded any conventional charges. Therefore, in the light of the decision rendered by the Apex Court in ***Ramilaben Chinubhai Parmar v. National Insurance Company***[3], an amount of Rs.50,000/- is awarded towards conventional charges like funeral expenses and loss of consortium. Thus, the total compensation comes to Rs.4,82,000/-.

16. In the light of the decisions of Apex Court reported in ***Dharampal and others Vs. U.P. State Road Transport Corporation***[4], the rate of interest is to be enhanced from 6% to 7.5% per annum on the enhanced compensation from the date of petition till the date of realisation.

17. In the result, the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.1,80,000/- to Rs.4,82,000/- with proportionate costs and interest at 7.5% per annum on the enhanced compensation from the date of petition till realisation. The interest awarded by the Tribunal at 6% per annum is on the amount of Rs.1,80,000/- from the date of petition till realisation shall be in tact. The respondents are directed to deposit the amount within one month from the date of receipt of copy of this order. On such deposit, the petitioners are permitted

[3] LAWS (SC) -2014-4-67
[4] MANU/SC/7680/2008

to withdraw the entire amount as per the apportionment fixed by the Tribunal.

Miscellaneous Petitions, pending if any, in this Petition shall stand closed.

GUDISEVA SHYAM PRASAD, J

24.10.2017.
knl

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.247 of 2006

Date 24.10.2017

knl