HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.917 OF 2010

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, challenging the award, dated 25.09.2009, passed in O.P.No.225 of 2007, by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Ranga Reddy District at L.B.Nagar (for short, the Tribunal).

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), by the first claimant father, second claimant mother and third claimant unmarried physically handicapped sister of deceased T.Narendra. They claimed compensation of Rs.5,00,000/- on account of the death of T.Narendra in the motor accident occurred on 26.01.2007.

3. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

4. The brief facts of the case are that on 26.01.2007 at about 9.15 am., while the deceased T.Narendra was standing by the side of the road near Mythrinagar Kaman on N.H.9, Madinaguda, Ranga Reddy District, the driver of the Tata Sumo vehicle bearing No.AP10U 8867 drove in a rash and negligent manner and dashed against the deceased, and also a Qualis vehicle bearing No.AP7AB 6774 parked at that place. The deceased sustained grievous injuries in the accident. He

was shifted to Remedy Hospital, Kukatpally, from there, to Gandhi Hospital, Secunderabad, where he succumbed to injuries on the same day. Police, Miyapur, registered a case in Crime No.23/2007 under Section 304-A IPC against the driver of the offending vehicle. The deceased was aged about 29 years by the date of accident.

5. The deceased worked as Project Associate in M/s.Pentagon Digital Services, Madinaguda, Hyderabad, and earning Rs.5,000/- per month. Due to the sudden demise of the deceased, the petitioners suffered great mental agony and faced hardship, and claimed compensation of Rs.5,00,000/-.

6. The first respondent remained *ex parte* before the Tribunal. The second respondent, The New India Assurance Company Limited, filed its counter stating that the petitioners have to prove the age, occupation, income of the deceased and also the rash and negligent driving on the part of the driver of the offending vehicle. It is further averred that they have to prove that the offending vehicle was insured with the second respondent. It is further averred that the claim of the petitioners is highly excessive, and therefore, sought for dismissal of the petition.

7. The Tribunal, on consideration of evidence of P.W.1, father of the deceased, P.W.2 – G.Krishna, an eye witness to the accident, held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

The Tribunal has granted Rs.3,12,000/- towards loss of dependency, Rs.15,000/- towards loss of estate and Rs.5,000/- towards conveyance, in all Rs.3,32,000/- to the petitioners.

8. This is an appeal filed by insurer challenging the quantum of compensation, awarded by the Tribunal. It is contended that the Tribunal has granted excessive compensation to the petitioner without considering the ratio laid down by the Apex Court in ***Smt. Sarla Verma v. Delhi Transport Corporation***[1]. It is further contended that 50% of the annual income of the deceased had to be deducted towards personal expenditure, but the Tribunal had deducted 1/3rd of the annual income of the deceased, which is against the ratio laid down in the above decision.

9. Heard learned counsel for the appellant Sri A.Ramakrishna Reddy. Despite service of notice, none appeared for respondents. Therefore, the arguments on behalf of the respondents deemed heard.

10. Learned counsel for the appellant submits that the Tribunal instead of deducting 50% of the annual income of the deceased towards personal expenditure, has deducted only 1/3rd which is against the law laid down by the Apex Court in the above case. As per the said ratio, 50% of the annual income should be deducted towards personal

[1] 2009 (6) SCC 121

expenditure, in case of a bachelor, who died leaving behind his parents.

11. The Tribunal in para 17 of its award observed as under:

> "17. Admittedly the deceased was not married by the time of his death. Hence, the age of his mother can be taken into consideration to fix the multiplier. The 1st petitioner/father of the deceased, who was examined as PW1, deposed that he was aged about 50 years at the time of death of his son. He deposed that he has got 3 sons including the deceased and one daughter i.e., 3rd petitioner. He refuted a suggestion that his elder son is aged about 35 years and he is aged 55 years but not 50 years as deposed by him. He further denied a suggestion that his wife/2nd petitioner is aged 50 years by the date of accident. They have not filed any documents to prove their ages. As the deceased was aged 29 years at the time of his death and he has got an elder brother, the mother of the deceased/2nd petitioner must have been aged atleast 47 years at the time of death of deceased."

12. The Tribunal has taken the age of the father of the deceased for the purpose of calculation of compensation and deducted 1/3 towards personal expenditure. The said calculation made by the Tribunal, in fact, is wrong and it is not in accordance with the ratio laid down in ***Smt. Sarla Verma***'s case (1 supra) and also as in ***Reshma Kumari v. Madan Mohan***[2]**.** As per **Reshma Kumari**'s case (2 supra), the age of the deceased shall be taken into consideration in a case of death of a bachelor. In this case, the age of the father of the deceased was taken into consideration. In case if the age of the deceased is taken, the entire calculation made by the Tribunal goes wrong. In case, 50% of the income is deducted as per ***Smt. Sarla Verma***'s case (1 supra), again

---

[2] 2013 (9) SCC 65

the calculation comes to the same amount as made by the Tribunal.

13. This is an appeal by the insurer. The insurer is challenging the quantum of compensation that it was not calculated as per ***Smt. Sarla Verma***'s case (1 supra). If the calculation is made as per ***Smt. Sarla Verma***'s case (1 supra). The deduction of 1/3 of the annual income of the deceased made by the Tribunal is incorrect. Further, this Court is of the considered view that it is unnecessary to interfere with the findings of the Tribunal awarding compensation by deducting 1/3 of the income of the deceased towards personal expenditure, and also by taking the age of the father of the deceased.

14. It is obvious that application of ratio in ***Smt. Sarla Verma***'s case (1 supra) to the case do not give any benefit to the insurer and it may even more beneficial to respondents 1 to 3.

15. Therefore, the appeal has no merits for consideration, as such, it is liable to be dismissed.

16. In the result, the appeal is dismissed. The award of the Tribunal dated 25.09.2009 in OP.No.225 of 2007 is confirmed.

17. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand closed as infructuous. No order as to costs.

GUDISEVA SHYAM PRASAD, J

Date:17.02.2017.
TJMR