HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.250 of 2005

JUDGMENT:

This appeal is arising out of the Order and Decree dated 13.09.2004 passed in MVOP.No.336 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, Tirupati (for short, the Tribunal).

2. The appellants, who are the legal heirs of the deceased, filed this appeal, having dissatisfied with the quantum of compensation awarded by the Tribunal on account of the death of the deceased in the motor vehicle accident.

3. The brief facts of the case are that on 18.02.2000 at about 11.45 pm., while the deceased P.Muni Polaiah, aged about 24 years, driving a milk van bearing No.TN9F 3906 proceeding towards Villipur from Chennai, the driver of lorry bearing No.TN27E 1787 drove the lorry in a rash and negligent manner at a high speed and dashed against milk van No.TN9F 3906. In that accident, Muni Polaiah succumbed to injuries. The father, brother and sister of the deceased filed MVOP.No.336 of 2000 against the owners and insurers of both the vehicles. The Tribunal, on consideration of the evidence, awarded compensation of Rs.1,79,456/- with interest @ 9% per annum against the first respondent, owner and the second respondent, insurer of lorry bearing No.TN27E 1787 .

4. The point for consideration in this matter is whether there are sufficient grounds for enhancement of compensation awarded by the Tribunal.

5. Heard the arguments of Sri D.Seshasayana Reddy, learned counsel for the appellants and Sri J.Y.Setty, learned counsel representing Sri T.Ramulu, learned counsel for second respondent.

6. Learned counsel for the appellants contended that the Tribunal has taken into consideration the income of the deceased as Rs.1,500/- per month, and ignored the batta of Rs.300/- per day, and also taken the age of the father of the deceased instead of the age of the deceased for assessing the compensation. In the light of the decision of the Hon'ble Supreme Court in **Smt. Sarla Verma Vs. Delhi Transport Corporation**[1]**,** the age of the deceased is to be taken into consideration in case of the deceased is a bachelor. The notional income of the deceased is to be taken into consideration as Rs.6,000/- per month, by considering the evidence of the co-driver, who was examined as P.W.2.

7. It is appropriate to refer to the judgments rendered with regard to the notional income of a deceased who was working in an unorganised sector as a labourer, such as, decisions of the Hon'ble Supreme Court in ***Ramesh Singh v. Satbir Singh***[2]***, New India Assurance Company Ltd. v. Smt. Shanti Pathak***[3]***, Oriental***

[1] 2009 (6) SCC 121
[2] MANU/SC/7089/2008
[3] MANU/SC/7776/2007

Insurance Co. Ltd. v. Syed Ibrahim[4]***, New India Assurance Co. Ltd., v. Kalpana (Smt)***[5]**,** 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***[6] and a decision of High Court of Calcutta **in *United India Insurance Co. Ltd. v. Shri Buro Mahara***[7].

8. It is obvious from the above decisions that if there is no proof of income, the notional income of the deceased is to be taken into consideration. The deceased is a labourer working in an unorganized sector. As a matter of fact, it is not possible to secure the proof for the income of a worker in an unorganized sector. The management of the unorganized sector usually do not maintain any registers, payrolls to know the salary particulars and other wages paid to the workers. Therefore, it may not be possible for the claimants to secure proof of income of the deceased. However, in this case, the claimants have examined the co-worker of the deceased who was also a driver earning Rs.6,000/- per month. In fact, the Tribunal has rightly did not consider the evidence, as there is every possibility of manipulation of the income through P.W.2, a co-worker. Therefore, the Tribunal has rightly disbelieved the evidence of the co-worker who was examined as P.W.2 in this case, holding that the owner of the vehicle has not been examined in this case. Therefore, the Tribunal has taken the notional income

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[4] MANU/SC/7915/2007
[5] (2007) 3 SCC 538
[6] MANU/KA/3721/2013
[7] MANU/WB/0139/2015

of the deceased as Rs.1,500/- per month. In fact, the Tribunal ought to have taken the income of the deceased as Rs.3,000/- per month instead of Rs.1,500/- per month. Keeping in view of catena of decisions rendered by the Hon'ble Supreme Court and other High Courts, it can be safely concluded that the notional income of the deceased can be taken as Rs.3,000/- per month, as he was working in an unorganized sector. The accident occurred in the year 2000, and the above decisions rendered during the relevant period. Therefore, the notional income of the deceased is taken into consideration as Rs.3,000/- per month.

9. It is obvious from the evidence that the deceased was 24 years by the date of accident. As per the decision in **Smt.Sarla Varma**'s case (1 supra), the age of the deceased is to be taken into consideration for assessment of compensation. The multiplier applicable to the age of the deceased is '18'. After deducting 50% towards the personal expenditure of the deceased, the income contributed by him to his family would be Rs.1,500/- per month. In the light of the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**[8]**,** the future prospects of the deceased to be taken into consideration for the purpose of calculation of compensation. Since the deceased was 24 years old and he was working in an unorganized sector, his wages would naturally being restored a period of time, and therefore, keeping in view of his age, 50% of increase in his wages is taken into consideration which comes to Rs.1,500/- out of the total notional income of Rs.3,000/- per

[8] 2013 ACJ 1403

month. If multiplied for 12 months with the appropriate multiplier of 18, the loss of dependency comes to Rs.6,48,000/- (Rs.3,000/- X 12 X 18).

10. Learned counsel for the appellants fairly conceded that the appellants claimed only Rs.6,00,000/-, and therefore, they are entitled for Rs.6,00,000/-.

11. In the result, the appeal is allowed and the compensation awarded by the Tribunal of Rs.1,79,456/- is enhanced to Rs.6,00,000/- with interest @ 7.5% per annum from the date of petition till realization. Respondent Nos.1 and 2 are jointly and severally liable to deposit the amount within a period of two months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the same in equal shares. Miscellaneous petition pending, if any, shall stand dismissed. No order as to costs.

GUDISEVA SHYAM PRASAD, J.

Date: 14.07.2017
TJMR