THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.1524 of 2010

JUDGMENT:

This appeal is arising out of the order dated 09.04.2010 passed in O.P.No.227 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional Sessions Judge (FTC), Mahabubnagar.

2. The appellants are the petitioners, who filed O.P.No.227 of 2008 under Section 166 of Motor Vehicles Act for compensation of Rs.4,00,000/- on account of the death of Jarpula Keshya (hereinafter referred to as 'the deceased').

3. The brief facts of the case are that, on 25.02.2008 at about 8:00 A.M., while the deceased was proceeding on scooter towards left side of the road in the limits of Kothapally Village, one lorry bearing No.AP 16 U 7178 came in opposite direction from Jadcherla side in a rash and negligent manner and dashed against the deceased, due to which, he received multiple injuries and immediately, he was shifted to District Headquarters Hospital, Mahabubnagar for treatment, where he succumbed to injuries. The police, Midjil registered a case in crime No.14 of 2008 under Section 304-A IPC against the driver of the lorry. Respondent No.1 remained *ex parte*. Respondent No.2 filed counter denying the allegations made in the petition. The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.2,89,500/- as against the claim of Rs.4,00,000/-. Dissatisfied with the quantum of compensation, the appellants filed this appeal for enhancement of the same.

4. Heard both sides and perused the material on record.

5. The only point that arises for consideration in this appeal is as to whether the appellants are entitled to enhancement of compensation?

6. Learned counsel for the appellants submits that the Tribunal has not taken correct income of the deceased while assessing the compensation. He further submits that the deceased was an agricultural labourer and also doing petty businesses and earning Rs.5,000/- per month but the Tribunal has taken his income as Rs.3,000/- per month. He placed reliance on the decision of the Hon'ble Supreme Court in *Sri Ramachandrappa v. Manager Royal Sundaram Alliance Insurance Company Limited*[1], wherein it was held that:

> "In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a coolie and was earning Rs.4,500/- per month at the time of accident. This claim is reduced by the tribunal to a sum of Rs.3,000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3,000/- per month. Secondly, the Appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, Appellant was working as a coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4,500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the

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[1] (2011) 13 SCC 236

monthly earning of the Appellant from Rs.4,500/- to Rs.3,000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4,500/-."

Basing on the above judgment, learned counsel for the appellants requested to take the notional income of the deceased as Rs.4,500/- per month.

7. Learned counsel for the appellants submits that the deceased was earning Rs.5,000/- per month by doing agriculture and petty businesses by the date of accident. But, except the evidence of the wife of the deceased, there was no proof for the income of the deceased that he was earning Rs.5,000/- per month. Learned counsel for the appellants also submits that the claimants have filed pattadar passbook of the deceased and also business licence certificate issued by the Sarpanch that he was doing business. But, neither the 1st respondent was called to prove the said certificate nor any other revenue official was called to prove the pattadar passbook. Except the sole testimony of PW1, there is no other material on record to show that the deceased was earning Rs.5,000/- per month.

8. Considering the facts and circumstances of the case and keeping in view of the ratio laid down in *Sri Ramachandrappa's* case (referred supra), the income of the deceased can be taken into consideration as Rs.3,500/- per month. Therefore, the annual income of the deceased comes to Rs.42,000/- (Rs.3,500/- x 12). The dependants of the deceased are six in number. In case family members are between 4 to 6, deduction towards personal expenditure of the deceased would be taken at 1/5th. Hence, after deducting one-fifth towards the personal expenses of the deceased, his annual contribution to the family would be at Rs.33,600/-. The age of the deceased at the time of accident was 30

years. After applying the multiplier '17', which is applicable to the age group of the deceased, the loss of dependency can be assessed at Rs.5,71,200/-. (Rs.33,600/- x 17).

9. The Tribunal has awarded Rs.7,000/- towards consortium, Rs.8,000/- towards loss of estate and Rs.2,500/- towards funeral expenses. In the light of the decision of the Apex Court in *Ramilaben Chinubhai Parmar v. National Insurance Company*[2], 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, loss of estate, funeral expenses and other conventional expenses, in view of the facts and circumstances of this case.

10. Learned counsel for the appellants submitted that the Tribunal has not awarded any amount towards loss of love and affection to the children of the deceased. Since, there are three minor children to the deceased, Rs.50,000/- can be awarded towards loss of love and affection to each of them.

11. It is also submitted by the learned counsel for the appellants that the rate of interest awarded by the Tribunal is 6%, which may be enhanced to 7.5% per annum. Keeping in view of the ratio laid down in *Reshma Kumari v. Madan Mohan*[3], the rate of interest is enhanced from 6% to 7.5% per annum.

12. Therefore, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

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[2] LAWS (SC) -2014-4-67

[3] (2009) 13 SCC 422

S.No.	Name of Head	Compensation awarded by the Tribunal	Compensation enhanced
1.	Loss of dependency	Rs.2,72,000/-	Rs.5,71,200/-
2.	Loss of consortium loss of estate and funeral expenses	Rs. 17,500/-	Rs. 50,000/-
3.	Loss of love and affection to the three children	Nil	Rs.1,50,000/- (Rs.50,000/-x3)
	Total	Rs.2,89,500/-	Rs.7,71,200/-

13. In the result, the appeal is allowed modifying the compensation awarded by the Tribunal from Rs.2,89,500/- to Rs.7,71,200/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization. The respondents are directed to deposit the balance amount within two months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the amount as per the proportion fixed by the Tribunal. The appellants are directed to pay the court-fee for the amount awarded over and above their claim within one month from the date of receipt of a copy of this order.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDISEVA SHYAM PRASAD,J

Date : 27.03.2017
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