THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1163 of 2007
and
Cross Objections (SR) No.28460 of 2015

JUDGMENT : (per the Hon'ble Sri Justice C.Praveen Kumar)

Assailing the Order dated 25th September, 2006 passed in M.V.O.P.No.887 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Court at Vijayawada, Insurance Company preferred M.A. C.M.A. No.1163 of 2007, while claimants filed cross-objections SR No.28460 of 2015 seeking enhancement of the compensation.

2. For the sake of convenience, the parties hereinafter referred to as arrayed in O.P.

3. The circumstances which led to filing of the appeal are as under :

The Petitioner No.1 is wife of the deceased Ramakrishna. Petitioner Nos.2 and 3, who are son and daughter of the deceased respectively, being minors, are represented by their mother - petitioner No.1. Petitioner Nos.4 and 5 are parents of the deceased. These claimants filed the petition under Section 166 of Motor Vehicles Act claiming compensation of Rs.50,00,000/- for the death of the deceased in respect of an accident which occurred on 9.8.2004. It is said that on that day the deceased along with his relatives was travelling in the crime vehicle i.e., Toyota Qualis Maxi Cab bearing No.AP 16 TT 8693 from Nellore to Vijayawada and when they reached Santhi Nagar on N.H.5, the 1st respondent, who is the driver of the crime vehicle, drove the vehicle in a rash and negligent manner with high speed and dashed against the stationed lorry bearing No.ABK 2525, resulting in death of the deceased. Basing on the same, a case in crime No.73 of 2004 of Gudluru Police Station came to be registered under Sections 337 and 304-A I.P.C. The deceased was working as a Senior Goods train driver in South Central Railways, Vijayawada, drawing a salary of Rs.25,000/- per month at the time of the accident. Since petitioners lost an earning member, on whom all of them were dependant, an application came to be filed seeking compensation.

4. The 1st respondent is the driver and the 2nd respondent is owner of the crime vehicle, while the 3rd respondent is insurer of the same. The 4th respondent is driver and the 5th respondent is owner of the stationed lorry. The driver of the Maxi Cab, in which the deceased and others were travelling, remained *ex parte*, while respondents 2 to 5 contested the matter. Out of them, only respondents 2, 3 and 5 filed counters denying the liability and also disputing the manner in which the accident took place.

5. The 2nd respondent filed written statement denying all the material allegations made in the petition and contended that the petitioners are put to strict proof of the alleged accident and its manner;

that the petitioners are put to strict proof that deceased died due to injuries in the alleged accident; that the petitioners are put to strict proof of legal heirs; that the petitioners are put to strict proof of employment of the deceased and his earnings; that the petitioners are put to strict proof that at the time of accident 1st respondent is having valid driving license up to 24.6.2007 and that the claim of the petitioners is very high, excessive and baseless.

6. The 3rd respondent filed the written statement contending that the petitioners are put to strict proof of all the allegations made in the petition; that the petitioners are put to strict proof of inquest and post-mortem on the deceased; that petitioners will have to prove that the crime vehicle was inspected by the Motor Vehicle Inspector; that the petitioners will have to prove that the driver of stationed lorry bearing No.ABK 2525 is also negligent in stopping the lorry without taking any precautionary measures; that the petitioners will have to prove that the deceased was working as Senior Goods train driver in S.C. Railway, Vijayawada and drawing Rs.25,000/- per month; that the petitioners are put to strict proof that they are legal heirs of the deceased; that the alleged accident occurred due to collision of two vehicles and first respondent has not acted negligently and rashly in driving the Toyota Qualis, as such, this respondent is not liable to pay compensation and that the claim of the petitioners is very high, arbitrary and baseless.

7. The 5th respondent filed his written statement denying all the allegations made in the petition and contended that the petitioners are put to strict proof of alleged accident; that this respondent is neither proper nor necessary party to the proceedings; that the petitioners have to claim only on respondents 1 to 3, but not on this respondent; that the claim of petitioners is high, excessive and usurious and petitioners are not entitled to the same, hence prayed for dismissal of petition against this respondent.

8. Basing on the pleadings, the following issues are settled for trial :

1) Whether the deceased Dasari Ramakrishna died in a motor vehicle accident on 9.8.2004 due to rash and negligent manner of driving of R1 driver of Toyoto Qualis Maxi Cab bearing No.AP 16 TT 8693 as claimed?

2) If so, What is the correct age and income of the deceased by the date of accident?

3) Whether the petitioners are entitled to the compensation as prayed for? If so, from whom and what amount?

4) To what relief?

9. In support of their case, the claimants examined P.Ws.1 to 3 and got marked Exs.A1 to A6 and Exs.X1 to X4, whereas respondents examined R.Ws.1 and 2 and got marked Exs.B1 to B3.

10. After analysing the evidence on record, the Tribunal awarded compensation of Rs.32,68,804/- as against the claim of Rs.50,00,000/-. Challenging the same, the present appeal and cross-objections are filed.

11. Sri Kota Subba Rao, learned counsel for the Insurance Company, submits that he is neither disputing the manner in which the accident took place nor the liability of the insurance company to pay the amount, but according to him, the quantum of compensation which has been awarded to the claimant is on a higher side. The dispute is only with regard to multiplier which was adopted and also the income of the deceased that was taken into consideration while calculating the loss of dependency.

12. On the other hand, Sri Challa Ajay Kumar, learned counsel for claimants, would contend that claimants are entitled to more compensation than what has been awarded in view of the latest constitutional bench judgment of the Apex Court in ***National Insurance Company Limited v. Pranay Sethi and Others***[1]. He would contend that since the deceased is aged about 35 years at the time of the accident, he would be entitled to the addition of 50% of actual salary towards future prospects and the amount to be deducted towards the personal expenses of the deceased can only be ¼th and not 1/3rd as adopted by the Tribunal. Apart from that, the suitable multiplier to be adopted to the age of the deceased would be ‘16’, and not ‘17’.

13. Since there is no dispute with regard to the manner in which the accident took place and also the liability of the insurance company to pay the compensation, we do not intend to go in the said aspect.

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[1] 2017 (ACJ) 2700

14. The fact that the deceased was aged about 35 years at the time of the accident is also not in dispute. It is also not in dispute that the deceased was working as a Senior Goods train driver in South Central Railways, Vijayawada, at the time of the accident.

15. The claimants placed on record, the salary certificate issued by the authority as Ex.X1 to show his monthly salary. As per the said certificate the monthly salary of the deceased is Rs.24,051.30 Ps. The break up of the salary is as under :

"The gross salary is Rs.24,051.30 Ps.

The net salary is shown as Rs.16,406/-.

Drawals		Deductions	
1. Pay	: Rs.6,375.00	P.F. Sub	: Rs.1,235.00
2. Dearness Pay	: Rs.4,144.00	VPF	: Rs.2,000.00
3. D.A.	: Rs.1,368.00	P.F. Adv.	: Rs.1,516.00
4. HRA	: Rs.1,864.80	GIS	: Rs. 30.00
5. CCA	: Rs. 180.00	LIC	: Rs.2,664.00
6. Conv.A.	: Rs. 75.00	P.Tax.	: Rs. 200.00
7. NDA	: Rs. 723.00		
8. K.M.A.	: Rs.9,143.00	Total =	: Rs.7,645.00
9. Cell. All.	: Rs. 28.50		
10.F.P.A.	: Rs. 150.00		
Gross :	Rs.24,051.00		

Net Payable : 16,406.00."

16. From the break up given, the trial Court has rightly deducted Rs.200/-, which was the contribution made towards Professional Tax, from the total deductions. The Trial Court has added net salary to the deductions and rightly fixed the loss of dependency at Rs.23,851/-.

17. As seen from the judgment, the trial Court deducted 1/3rd towards personal expenses of the deceased. Admittedly, there were 5 dependants on the deceased at the time of incident. Applying the judgments of the Apex Court in ***Sarla Verma v. DTC*** [2] and ***Pranay Sethi's case*** (supra), only ¼th has to be deducted towards personal expenses of the deceased. At this stage it is also to be noticed that the Apex Court in ***Pranay Sethi's case*** (supra) observed that where the deceased is aged between 30 to 40 years, 50% of the income shall be added towards future prospects. Even the said proposition is not disputed by the learned counsel for the Insurance Company. That being so, if the monthly income of the deceased was taken at Rs.23,851/- after deducting Rs.200/- towards profession tax and if 50% of the said amount is added towards future prospects, earnings of the deceased per month would be around Rs.35,776/-. If ¼th is deducted towards his personal expenses, the loss of dependency would be Rs.26,832/- per month and annually it would be around Rs.3,21,984/-. In view of the judgment in ***Sarla Verma's case*** (supra) the multiplier applicable for the age group 31 to 35 is '16'. By applying the multiplier '16', the total compensation comes to Rs.51,51,744/- (3,21,984 x 16). Adding Rs.40,000/- towards consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, the total compensation would be Rs.52,21,744/-. This would be more than the compensation claimed.

[2] (2009) 6 SCC 121

18. In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[3], the Apex Court while referring to ***Nagappa Vs. Gurudayal Singh***[4] held as under :

> "It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

In view of the Judgments of the Apex Court referred to above, the claimants are entitled to claim more amount than what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant is a paramount consideration, the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

19. From the above, it is clear as against the amount of Rs.32,68,804/- awarded by the trial Court, the petitioners will now get Rs.52,21,744/-, in view of the cross objections filed by them.

20. As per the order dated 23.11.2017 in M.A.C.M.A. M.P.No.4211 of 2015 this Court condoned the delay of 2916 days in filing the cross objections subject to the condition that any enhancement made and interest therein shall be only from the date of the order i.e., 23.11.2017, but not from the date of the petition.

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[3] (2011) 10 SCC 756
[4] 2003 ACJ 12 (SC)

21. Therefore, it is ordered that the enhanced amount shall carry interest at 7.5% per annum from 23.11.2017 till date of payment with proportionate costs against respondents 1 to 3 jointly and severally. Respondents 1 to 3 are directed to deposit the said amount after adjusting the amount if any already deposited or paid within a period of one month from the date of receipt of a copy of the order.

22. The enhanced amount shall be apportioned in the manner directed by the Tribunal. The claimants would be entitled to the compensation awarded subject to payment of deficit court fee.

23. On deposit of the compensation, claimants are permitted to withdraw their respective shares.

24. Advocate fee is fixed at Rs.2,500/-.

25. Accordingly, the appeal filed by the Insurance Company is dismissed and cross-objections filed by the petitioners is allowed with costs.

26. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N.BALAYOGI

14th December, 2017
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