HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No.1695 of 2010

JUDGMENT:

This appeal is filed challenging the judgment and decree, dated 21.08.2009 passed in O.P.No.339 of 2007 on the file of the Chairman-Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal (for short 'the Tribunal').

2. The appellants/petitioners are the legal heirs of K.Venkateswarlu (hereinafter referred to as 'the deceased'), who died in a motor vehicle accident that occurred on 26.07.2007. They filed the said O.P. under Section 166(c) of the Motor Vehicles Act, 1988, claiming compensation of Rs.8,00,000/- on account of the death of the deceased.

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

4. The brief facts of the case are that, the 1st petitioner is the wife, petitioners 2 and 3 are the daughters and petitioners 4 and 5 are the parents of the deceased. On 26.07.2007 at about 1:00 PM, the deceased was proceeding on a motor cycle driven by his friend by name Khaleel from Medinova Hospital, Nandyal towards Shantiram General Hospital, Neravada and when it reached near Nandi Milk Diary, a lorry bearing No.AP21-W-4655 came in opposite direction driven in a rash and negligent manner and at high speed, dashed the motor cycle, due to which Khaleel, the rider of the motor cycle died on the spot and the deceased sustained grievous injuries and immediately he was shifted to the Government Hospital, Nandyal, from there he shifted to Government General Hospital, Kurnool, where he died on the same day at about 3.45 PM. On consideration of the oral and documentary evidence, the Tribunal has

awarded compensation of Rs.2,66,000/- as against the claim of Rs.8,00,000/-.

5. The point for consideration is whether the petitioners are entitled to enhancement of compensation?

6. Heard Sri B.S.Reddy, learned counsel for the petitioners and Sri G.Vasantha Rayudu, Standing Counsel for 2nd respondent-Insurance Company.

7. Learned counsel for the petitioners submits that the compensation awarded by the Tribunal is inadequate. He placed reliance on the decision of the Apex Court in *Kalpanaraj and others v. Tamilnadu State Transport Corporation*[1] and submitted that in case of dependant children, Rs.1,00,000/- each was awarded towards loss of consortium, and towards loss of love and affection and Rs.50,000/- awarded for funeral expenses and Rs.1,00,000/- was awarded towards loss of estate, and granted 9% per annum rate of interest. By placing reliance on the above decision, learned counsel for the petitioners submits that the Tribunal has awarded very meager amounts in this case and requested for enhancement of the same.

8. Learned counsel for the petitioners also placed reliance on the decision of Apex Court in *Asha Verman and others v. Maharaj Singh and others*[2] and submitted that Rs.1,00,000/- was awarded towards loss of love and affection to parents and Rs.25,000/- was awarded towards funeral expenses and therefore, requested for enhancement of compensation under the head of loss of love and affection to the parents.

9. Learned counsel for the petitioners also placed reliance on the decision reported in *Smt.Sarla Verma and others Vs. Delhi Transport*

[1] (2015)2 SCC 764
[2] (2015)11 SCC 389

Corporation and another[3] and submitted that the deceased is entitled to claim for future profits at the rate of 50%. The deceased was 38 years old by the date of accident and as per *Sarla Verma's case*, upto 40 years, 50% of loss of estate has to be awarded.

10. Learned counsel for the petitioners also relied on the decision of Apex Court in *Nagappa Vs. Gurudayal Singh*[4] and requested for grant of just compensation.

11. Learned Standing Counsel submits that the deceased was a pillion rider and therefore, there is no coverage of insurance for his liability. He further submits that the rider of the motor cycle is also not having valid driving licence. Therefore, there is violation of terms and conditions of the insurance policy. He also submits that the lorry is planted in this case for the purpose of coverage of insurance policy and that the lorry is not involved in the commission of offence and therefore, sought for dismissal of the appeal.

12. It is pertinent to note that the 2nd respondent-Insurance Company has not filed a petition before the trial Court under Section 170 of the Motor Vehicles Act for taking of the defences available to the owner of the vehicle to contest the matter.

13. In view of the fact that the Insurance Company had not taken permission before the Tribunal by filing a petition under Section 170 of the Motor Vehicles Act, it is not entitled to rise all these contentions in this appeal. It is also pertinent to note that after passing the award, the Insurance Company has not preferred any appeal challenging the award with regard to the violations raised by way of an appeal. It is also obvious that the Insurance Company has not filed any cross-objections also in this

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3 2009 (6) SCC 121

4 2003 (2) SCC 274

appeal raising all these contentions. Therefore, there are no valid grounds to entertain the contentions raised by the Insurance Company in this appeal.

14. As a matter of fact, loss of estate and future prospects are almost similar benefits to be awarded to the legal representatives of the deceased. Since in the case of *Sarla Verma* (referred supra), it was held that future prospects of 50% have to be considered for the persons aged between 30 to 40 years and whereas in this case, the deceased was aged about 38 years and therefore, they are entitled for future profits of 50%. The deceased was working as receptionist in Medinova Hospital. No doubt, they have made a claim of Rs.8,00,000/-. The deceased was earning Rs.3,000/-, but they could not prove the same and therefore, the income of the deceased was taken by the Tribunal as Rs.2,000/- per month and by giving 50% enhancement towards future prospects, it comes to Rs.3,000/- per month. Therefore, the annual income of the deceased comes to Rs.36,000/- (Rs.3,000/- x12).

15. Learned counsel for the petitioners submits that the Tribunal has taken 1/3rd towards personal expenses of the deceased, whereas it was expected to take 1/4th as per the ratio laid down in the case of *Sarla Verma* (referred supra). No doubt, the petitioners are five, who are dependants of the deceased and claimed compensation on account of his death. As per the ratio laid down in the case of *Sarla Verma* (referred supra) for 4 to 6 persons, deduction of 1/4th has to be taken for the purpose of calculation of compensation. Therefore, on deducting 1/4th towards personal expenses of the deceased, his annual contribution to the family would be at Rs.27,000/-.

16. It is pertinent to note that the Tribunal has taken '16' multiplier for the purpose of calculating compensation considering the age of the deceased. As per Schedule II of *Sarla Verma*'s case, keeping in view of the age of the deceased as 38, the multiplier applicable to his age is '15'. After applying the multiplier '15', the loss of dependency can be assessed at Rs.4,05,000/- (Rs.27,000/- x 15).

17. On consideration of the decisions referred above by the learned counsel for the petitioners and in view of the facts and circumstances of the case, loss of consortium to the wife is enhanced from Rs.5,000/- to Rs.1,00,000/- and funeral expenses is enhanced from Rs.2,500/- to Rs.25,000/- and Rs.1,00,000/- is granted towards loss of love and affection for both the children.

18. In the result, the appeal is partly allowed enhancing the compensation from Rs.2,66,000/- to Rs.6,30,000/- 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 amount within two months from the date of receipt of a copy of this order. On such deposit, the petitioners are entitled to withdraw the entire amount. There shall be no order as to costs.

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

GUDISEVA SHYAM PRASAD,J

Date : 08.03.2017
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