HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.766 OF 2010

JUDGMENT:

This appeal is arising out of the order dated 17.11.2009 in M.V.O.P.No.682 of 2008 on the file of Chairman, Motor Vehicles Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur (for short, Tribunal).

2. The appellants herein are the legal heirs of deceased Yarramsetty Brahmaiah, who died in a motor vehicle accident on 15.03.2008. They filed M.V.O.P.No.682 of 2008 under Sections 140 and 166 of the Motor Vehicles Act claiming compensation of Rs.30,00,000/- on account of the death of Yarramsetty Brahmaiah.

3. The brief facts of the case are that on 15.03.2008, while the deceased was going for a morning walk, and when he was near Indian Bank at National Highway Road of Chilakaluripet, a lorry bearing No.AP04V 9279, of the first respondent, came in a rash and negligent manner at high speed and hit the deceased, as a result of which, the deceased sustained injuries and died on the spot. At the time of accident, the deceased was aged about 43 years and was Managing Partner of Siva Jyothi Dal Mill, Chilakaluripet and also Siva Jyothi Granites, Martur and was earning Rs.3,00,000/- per annum.

4. Before the Tribunal, the first respondent remained *ex parte.* The second respondent filed the written statement contending that there was no negligence on the part of the driver of the crime vehicle and the accident occurred due to the negligence of the deceased while he was negligently crossing the national highway and sought for dismissal of the OP.

5. The Tribunal, on consideration of the evidence of witnesses P.Ws.1 to 3 and relying on Exs.A.1 to A.10 and Exs.X.1 to X.3, awarded compensation of Rs.6,90,000/- as against the claim of the appellants of Rs.30,00,000/-. Being aggrieved by the said award, the appellants are before this Court, claiming enhancement of compensation on two grounds, firstly that the Tribunal has not decided the rash and negligent act on the part of the driver of the crime vehicle, and secondly that the quantum of compensation awarded by the Tribunal is inadequate and not a just compensation.

6. Heard the arguments of learned counsel for the appellant Sri B.Parameswara Rao and learned counsel for second respondent Sri T.Mahender Rao.

7. Learned counsel for the appellants mainly contends that the Tribunal has considered the evidence on record and wrongly attributed negligence of 50% to the deceased. It is contended that the deceased went for a morning walk, and though there was no negligence on his part, the Tribunal has held that there

was 50% contributory negligence on the part of the deceased. He contended that the Tribunal observed that the deceased was on the middle of the road, without any evidence. P.W.3 did not state anywhere in his evidence that the deceased was on the middle of the road, therefore, the finding of the Tribunal is incorrect and it is liable to be set aside.

8. Learned counsel for second respondent submits that the Tribunal rightly placed reliance on the evidence of P.W.3 and came to the conclusion that the deceased was on the middle of the road. He further submits that there are two service roads on either side of the national highway, and the deceased, instead of walking on the service road, was walking on the middle of the national highway, which proves the negligence on the part of the deceased.

9. The arguments advanced by learned counsel for second respondent is considered in the light of the evidence of P.W.3. It is obvious that there is no evidence on record to show that the deceased was on the middle of the road. It is appropriate to refer to the cross-examination of P.W.3 at this juncture, which reads as under:

> " Police examined me in connection with the accident. It is true that the accident took place on NH-5 road. It is true that there are service roads on either side of the road. The deceased Muralikrishna was working along with me. It is true that I have not given the names of the persons who died in the accident, when police examined me. It is not true that on account of our negligence in walking on NH-5 road this accident took place. It is not true that the deceased were on the middle of the road when the

> accident took place. It is not true that out of friendship I am deposing falsely."

10. It is obvious that P.W.3 has denied the suggestion that the deceased was on the middle of the road when the accident took place. It clearly reveals that the deceased was not actually on the middle of the road, whether it was national highway or any other road.

11. P.W.3 was said to be an eye witness to the accident. His evidence was believed by the Tribunal, but however, came to the wrong conclusion that the deceased was on the middle of the road. P.W.3 clearly denied the suggestion made to him that the deceased was walking on the middle of the national highway. It is pertinent to note that no person who goes for a morning walk would walk on the middle of the road, that too, on a national highway. It is not probable under any circumstances. Therefore, the conclusion reached by the Tribunal that the deceased walked on the middle of the road does not appear to be a probable conclusion. The Tribunal, without basing on any evidence, came to the conclusion that the deceased was walking on the middle of the national highway at the time of the accident. Therefore, the finding of the Tribunal that there is contributory negligence on the part of the deceased does not sustain. Therefore, that finding is set aside.

12. Learned counsel for the appellants submitted that the Tribunal has not awarded adequate compensation under the

heads of loss of consortium, loss of estate and funeral expenses. It is submitted that the Tribunal has awarded Rs.25,000/- towards consortium, Rs.50,000/- towards loss of estate and Rs.5,000/- towards funeral expenses.

13. Learned counsel for the appellant, placing reliance on a decision of the Apex Court in **Rajesh v. Rajbir Singh[1],** submitted that the Apex Court awarded loss of consortium at Rs.1,00,000/-, funeral expenses at Rs.25,000/- and loss of estate at Rs.1,00,000/-. He also submitted that the Tribunal did not award any amount towards loss of love and affection for minor child.

14. However, considering the facts and circumstances of this case, the ends of justice would be met, if an amount of Rs.25,000/- towards love and affection of minor child is awarded and the amount of Rs.5,000/- granted by the Tribunal towards funeral expenses is enhanced to Rs.25,000/-. So far as the amounts granted by the Tribunal towards loss of consortium and loss of estate are concerned, this Court is not inclined to interfere with the same.

15. Learned counsel for the appellants further submits that the Tribunal has not taken into consideration the income of the deceased basing on Ex.X.3, the income tax returns submitted prior to the death of the deceased. He further submits that the

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[1] 2013 ACJ 1403

Tribunal has not considered the income tax returns Exs.X.1 and X.2 which are filed subsequent to the death of the deceased, and therefore, they are to be taken into consideration for the purpose of calculation of compensation.

16. The Tribunal, in para 13 of the award, held as under:

> "13. Now what is the income of the deceased has to be seen. The learned counsel for respondent pointed out that Ex.X1 and X2 Income Tax Returns were shown to be filed by the first petitioner after the death of deceased any they are only inflated figures but when it comes to payment of tax as such, a sum of Rs.5,800/- was paid for 2007-2008. The original books are not filed. The counsel for petitioner pointed out that Ex.X3 is the Returns filed by the deceased himself and the tax paid for the financial year 2005-06 and that is Assessment Year 2006-07 is Rs.27,049/- and the income is shown as Rs.2,40,000/-. This court has no hesitation to accept the annum income of Rs.3,00,000/- as claimed in the petition."

17. The Tribunal assessed the compensation by taking into consideration the income of the deceased as Rs.1,00,000/- per annum, though the income of the deceased was shown as Rs.3,00,000/- per annum. The income taken into consideration by the Tribunal at Rs.1,00,000/- towards loss of earnings does not require any interference. The Tribunal has calculated the compensation towards loss of earnings as Rs.13,80,000/-. Out of that amount, 50% was only granted, as there is 50% liability fixed against the deceased.

18. In **Nagappa v. Gurudayal Singh[2],** the Apex Court clearly held that the Courts should award just compensation. It is even

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[2] AIR 2003 SC 674

further stated that the award of compensation need not be limited to the amount in the claim petition. In **Reshma Kumari v. Madan Mohan**[3]**,** the Apex Court had given certain guidelines in awarding compensation in case of death.

19. In view of the foregoing reasons, there was no negligence on the part of the deceased, and therefore, the claimants are entitled for the 50% of the deducted amount. The tabular form given below would show the enhancement particulars.

Sl.No.	**Name of Head**	**Compensation Awarded by Tribunal**	**Compensation Awarded by this Court**
01.	Loss of dependency	Rs.13,00,000/-	Rs.13,00,000/-
02.	Loss of consortium	Rs.25,000/-	Rs.25,000/-
03.	Loss of estate	Rs.50,000/-	Rs.50,000/-
04.	Funeral expenses	Rs.5,000/-	Rs.25,000/-
05.	Loss of love and affection	Nil	Rs.25,000/-
	TOTAL	**Rs.13,80,000/-** (But granted Rs.6,90,000/- i.e., 50% on Rs.13,80,000/-)	**Rs.14,25,000/-**

20. In the result, the appeal is partly allowed, modifying the award passed by the Tribunal, by enhancing the compensation from Rs.6,90,000/- to Rs.14,25,000/- with interest @ 7.5% per annum. The second respondent is directed to deposit the amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the entire amount in proportion to the apportionment

[3] 2013 (9) SCC 65

made to them by the Tribunal. There shall be no order as to costs.

21. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G.SHYAM PRASAD, J

Date: 07.02.2017
TJMR