THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.2835 of 2005

JUDGMENT:

Claimants, in M.V.O.P.No.553 of 2003 on the file of the Motor Accidents Claims Tribunal (District Judge), Vizianagaram, are the appellants in the present appeal, filed under Section 173 of the Motor Vehicles Act, 1988 (for brevity, 'the Act').

Heard Sri Venkateswara Rao Gudapati, learned counsel for the appellants, and Sri B.Devanand, learned Standing Counsel for the second respondent-insurance company, apart from perusing the material available before this Court.

Claimants are the parents of the deceased, one Bongu Balaram. In the present appeal, the claimants-appellants herein are seeking enhancement of the compensation awarded by the Tribunal.

The son of the appellants met with an accident on the intervening night of 18/19.03.2003 when he was driving his lorry bearing No.AP 35 T 5149 from Rayagada to Raipur. The claimants-appellants herein approached the Tribunal by way of filing M.V.O.P.No.553 of 2003, under Section 163-A of the Act, claiming compensation of Rs.3,00,000/- together with interest and costs. The owner of the vehicle remained *ex parte* and the respondent-insurance company contested the matter by filing a counter.

On the basis of the material available, the Tribunal framed the following issues for consideration:

1. Whether the accident occurred due to the rash and negligent driving by the driver of the lorry bearing registration number AP 35T 5149 ?
2. Whether the petitioners are entitled to claim compensation?
3. To what relief?

During the course of trial, on behalf of the claimants-appellants herein, first claimant was examined as P.W.1 and Exs.A1 to A5 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1-copy of certificate of insurance along with duplicate schedule, in respect of the offending vehicle-lorry, was marked.

The Tribunal, by way of the award, dated 25.07.2005, which is impugned in the present appeal, granted a total compensation of Rs.1,73,000/- with interest @ 9% p.a. from the date of the petition till the date of realisation. Out of the said amount, the Tribunal fixed an amount of Rs.1,56,000/- towards loss of dependency, Rs.15,000/- towards loss of estate and Rs.2000/- towards funeral expenses. In the present appeal, the claimants prayed for enhancement of the said amounts granted by the Tribunal.

According to the learned counsel for the appellants, the Tribunal grossly erred in fixing the annual earnings of the deceased @ Rs.18,000/-; in adopting '13' multiplier and also went wrong in granting paltry sums of money towards the other heads.

On the other hand, it is submitted by the learned Standing Counsel for the second respondent-insurance company that the Tribunal fixed the compensation strictly in accordance with law, as such, the impugned award is not amenable for any interference of this Court under Section 173 of the Act.

In the above background, now the issue that emerges for consideration is:

> Whether the claimants-appellants are entitled for any enhancement of compensation awarded by the Tribunal?

It is very much clear from a reading of the impugned order that, on issue No.1, the Tribunal held in favour of the claimants. While dealing with issue No.2, the Tribunal fixed the annual income of the deceased as Rs.18,000/- and, after deducting 1/3rd of the same towards personal expenses of the deceased, the Tribunal arrived at Rs.12,000/- p.a. towards contribution to the family members.

According to the learned counsel for the appellants, the Tribunal should have fixed the income of the deceased atleast @ Rs.3000/- per month, which would come to Rs.36,000/- p.a. (Rs.3000/- X 12). In this context, it may be appropriate to refer to the judgment of the Honourable Apex Court in ***LATHA WADHWA AND OTHERS v. STATE OF BIHAR AND OTHERS***[1]. According to the said decision of the Honourable Apex Court, the minimum earnings of a person should be taken as Rs.3000/- per month and if the same is adopted, the annual income of the deceased would come to Rs.36,000/-(Rs.3000/- X 12).

As per the decision of the Honourable Apex Court in ***SARALA VERMA (SMT.) & OTHERS v. DELHI TRANSPORT CORPORATION***

[1] (2001) 8 SCC 197

& ANOTHER[2], in respect of unmarried persons, 50% of the income is liable to be deducted towards personal expenses. If 50% is deducted from the annual income of the deceased, the balance would be Rs.18,000/-. Therefore, the Tribunal should have calculated on the said basis.

Coming to the multiplier, which needs to be adopted, the Tribunal adopted the multiplier '13' and fixed the compensation amount. The age of the deceased at the time of the death was '27' years. As per ***Sarala Verma*** (second cited supra) the multiplier which needs to be adopted for the persons between 26 to 30 years is '17'. Therefore, the Tribunal should have taken '17' instead of '13'. If the multiplier '17' is taken, the amount to be awarded towards loss of dependency should be fixed at Rs.3,06,000/- (Rs.18,000/- X 17)

Coming to the other heads, the Tribunal awarded Rs.15,000/- towards loss of estate and Rs.2000/- towards funeral expenses. As per the judgment of the Honourable Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI & OTHERS*** (S.L.P.(civil) No.25590 of 2014 and batch) dated 30.10.2017, the compensation towards loss of estate is required to be fixed at Rs.15,000/- which the Tribunal correctly fixed. As per the above said decision, claimants are entitled to Rs.15,000/- towards funeral expenses instead of Rs.2000/- granted by the Tribunal. In view of the above, the amounts payable to the claimants-appellants are as follows:

---
[2] (2009) 6 SCC 121

Amount towards loss of dependency:	Rs.3,06,000/-
Amount towards loss of estate:	Rs.15,000/-
Amount towards funeral expenses:	Rs.15,000/-
Total:	Rs.3,36,000/-

Accordingly, the appeal is allowed with proportionate costs awarding a sum of Rs.3,36,000/-. It is made clear that the claimants-appellants are entitled for interest @ 7.5% p.a. on the enhanced amount.

As a sequel thereto, miscellaneous Petitions pending, if any, in this appeal, shall stand closed.

A.V.SESHA SAI,J

14th December, 2017
Tsy