THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.559 OF 2011
and
X-OBJECTIONS (SR) No.41599 OF 2011

COMMON JUDGMENT:

Appellant-Insurance Company filed this appeal against the award and decree dated 07.07.2010 passed in O.P.No.1672 of 2008 by the Chairman, Motor Accident Claims' Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, granting compensation of Rs.10,76,000/- along with interest @ 7.5% per annum as against the claim of Rs.20,00,000/- for the death of deceased M.Ashok Kumar. Aggrieved by the quantum of compensation, the claimants also filed X-Objections.

The respondents-claimants, who are the dependents of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act, 1988, before the Tribunal claiming compensation against the owner of the offending vehicle and also its insurer on account of death of the deceased M.Ashok Kumar in the motor accident occurred on 26.05.2008 alleging that on 26.05.2008 at about 6.40 a.m. the driver of the offending vehicle i.e. Lorry bearing No.AP29 TA 693 drove the lorry in rash and negligent manner and dashed against the deceased while he was proceeding on a two wheeler near KCP Junction, Panjagutta, resulting in death of the deceased. Claiming that the deceased was hale and healthy, aged 21 years, at the time of accident and he has completed B.Tech., the claim petition was filed for Rs.20,00,000/-.

The owner of the offending vehicle remained *ex parte*.

The appellant-Insurance Company filed counter stating that the claimants have failed to prove income and occupation of the deceased and denied the averment that the vehicle was driven in a rash and negligent manner. The accident occurred due to the rash and negligence of the deceased and the Insurance Company is not liable to pay any compensation and the compensation claimed is excessive.

Based on the above pleadings, the Tribunal framed the following issues:

(1) *Whether the deceased died in the accident on 26.05.2008 due to rash and negligent driving of driver of Lorry bearing No.AP29 TA 693?*

(2) *Whether the petitioners are entitled for compensation? If so, to what amount and from whom?*

(3) *To what relief?*

On behalf of the claimants, PWs 1 and 2 were examined and Exs.A.1 to A.15 were got marked. On behalf of the Insurance Company, R.W.1 was examined and Exs.B.1 to B.6 were marked.

The Tribunal after considering the evidence before it came to the conclusion that the driver of the offending lorry bearing No.AP29 TA 693 drove the vehicle in a rash and negligent manner, dashed the deceased while he was proceeding on a two wheeler and in the accident the deceased sustained injuries and succumbed to the injuries. The evidence of P.W.2, who is an eye witness to the accident, is that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. The documentary evidence marked as Ex.A.1-Certified copy of FIR and

Ex.A.2-Certified copy of Charge sheet supports the evidence of P.W.2. The Tribunal, based on the evidence of P.W.1, came to the conclusion that the deceased has completed Engineering in Computer Science in the year 2008 and he got admission at International Technological University, U.S. for further studies. Exs.A.1 to A.9-Educational Certificates of the deceased, Ex.A.10-passport of the deceased, Ex.A.11-Marks of TOEFL and Ex.A.12-Admission letter of International Technological University, USA, were produced to prove that the deceased has studied B.Tech., and got admission at International Technological University, U.S., for further studies. The Tribunal has taken the notional income of the deceased as Rs.14,000/- per month. After deducting 50% thereof towards personal expenses as the deceased was aged about 21 years, the Tribunal computed the contribution of the deceased to his family as Rs.7,000/- per month and thereby arrived the annual income of the deceased at Rs.84,000/- . The Tribunal has adopted the multiplier of '14' taking into consideration the age of the mother of the deceased. The Tribunal worked out the loss of earnings on account of death of the deceased as Rs.11,76,000/-. As the claimants have claimed personal accident coverage of Rs.1,00,000/-, as evident from Exs.B.1 to B.6, the Tribunal granted the compensation of Rs.10,76,000/- with interest @ 7.5% per annum to the claimants.

Learned counsel for the appellant-Insurance Company would contend that the Tribunal grossly erred in holding that the appellant Insurance Company is liable to pay the compensation.

He further contended that the Tribunal has committed error in taking the notional income of the deceased as Rs.14,000/- per month without there being any evidence regarding the income of the deceased. The Tribunal ought to have taken Rs.3,000/- per month as notional income of the deceased. The Tribunal committed error in granting compensation of Rs.10,76,000/- with interest @ 7.5% per annum, which is on higher side. The Tribunal ought to have granted interest @ 6% per annum.

Sri K.Dhanunjaya Reddy, learned counsel appearing for the respondents-claimants, who filed X-objections under Order XVI Rule 22 of the Code of Civil Procedure, would contend that the Tribunal ought to have granted compensation of Rs.20,00,000/- as claimed by the claimants. The Tribunal grossly erred in applying the multiplier of '14' based on the age of mother of the deceased. No amounts were awarded towards funeral expenses. Further, in view of the ratio laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[1], the claimants are also entitled for future prospects. Learned counsel relied on the following decisions in support of his submissions:

1) ***Ashvinabhai Jayhantilal Modi vs. Ramkaran Ramchandra Sharma and another***[2] wherein for the death of '18' years old deceased bright medical student income was taken as Rs.18,000/- per month by the Tribunal. However, the Hon'ble Supreme Court has enhanced the future income to Rs.25,000/-

[1] 2017 Law Suit (SC) 1093
[2] (2015) 2 SCC 180

per month. After deducting 1/3rd towards personal expenses and applying the multiplier of '13', a sum of Rs.27,25,000/- was granted towards compensation along with interest at 9% per annum.

2) ***Munna Lal Jain and another vs. Vipin Kumar Sharma and another***[3] wherein the deceased was aged about '30' years, self employed, working as Pandit and was a bachelor. The Tribunal has granted the compensation of Rs.6,59,000/-. The same was enhanced by the High Court by fixing the monthly income at Rs.12,000/-, adding 30% towards future prospects, deducting 50% towards personal expenditure and by applying the multiplier of '13', the compensation was fixed at Rs.12,61,800/- with 7.5% interest. However, the Hon'ble Supreme Court has enhanced the future prospects to 50% and applied the multiplier of '19' for the age of the deceased and enhanced the compensation to Rs.18,36,000/-.

3) ***Radhakrishna and another vs. Gokul and others***[4] wherein the deceased was aged 19 years, a student of Engineering. The Tribunal considering the probable income of the deceased as Rs.15,000/- per annum, deducted 1/3rd therefrom towards personal expenses, applied the multiplier of '17', determined the dependency as Rs.1,70,000/-. The Tribunal also granted Rs.10,000/- each to mother and father of the deceased towards loss of love and affection and Rs.2,000/- towards funeral expenses. Thus, a total compensation of Rs.1,92,000/- was granted by the

[3] (2015) 6 SCC 347
[4] (2013) 16 SCC 585

Tribunal. In appeal, the High Court enhanced the same to Rs.2,00,000/-. However, the Hon'ble Supreme Court following the ratio laid down in ***Arvind Kumar Mishra vs. New India Assurance Co. Ltd.,***[5] has granted a *lump sum* compensation of Rs.7,00,000/-.

4) ***Joseph Philip C.J. and another vs. Judies and others***[6] wherein the Tribunal has awarded the compensation of Rs.3,13,200/- for the death of the deceased, who was aged 24 years, qualified in computer application and working in a Private Company. However, the High Court assessed the monthly income of the deceased as Rs.8,000/- per month and awarded the total compensation of Rs.5,74,000/-. The Hon'ble Supreme Court by considering the monthly income of the deceased at Rs.10,000/-, by adding 50% thereof towards future prospects, deducting half of income for personal expenses and by adopting the multiplier of '18' and awarding Rs.50,000/- towards love and affection, has enhanced the compensation to Rs.16,96,000/-.

5) ***Nagar Mal and others vs. Oriental Insurance Co. Ltd., and others***[7] wherein the deceased was aged 20 years, a student pursuing C.A. and earning Rs.15,000/- per month. The Tribunal has assessed the income of the deceased as Rs.6,000/- per month, deducted half therefrom towards personal expenses, adopted the multiplier of '11' considering the age of the parents of the deceased and thereby awarded the compensation of Rs.4,31,000/-. In

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[5] (2010) 10 SCC 254
[6] 2018 ACJ 672
[7] 2018 ACJ 971

appeal, the same was confirmed by the High Court. However, in further appeal, the Hon'ble Supreme Court took the income of the deceased as Rs.6,000/- per month, deducted half therefrom towards personal expenses, added 40% towards future prospects, adopted the multiplier of '17' by considering the age of the deceased and thereby calculated the loss of dependency as Rs.8,56,800/-. That apart, the Hon'ble Supreme Court has also granted Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the compensation was enhanced to Rs.8,86,800/-.

6) ***B.Ramulamma vs. Venkatesh Bus Union, Lingaraja-puram, Bangalore and another***[8] wherein the deceased has completed B.Tech. and working in private sector. The Division Bench of this Court held that minimum income of B.E. Graduate can be fixed at Rs.12,000/- per month and 50% thereof was deducted towards personal expenses and the loss of dependency was arrived at Rs.10,80,000/- by applying the multiplier of '15' instead of Rs.3,90,000/- awarded by the Tribunal with interest at 9% per annum from the date of petition till realization.

7) ***S.Saraswathy and another vs. A.Elumalai and another***[9] wherein the deceased was a final year Engineering student and an income tax assessee. The Tribunal has taken Rs.7500/- per annum towards income of the deceased and awarded compensation of Rs.8,50,000/-. The Appellate Court considering the average income of the deceased at Rs.20,000/-, deducted half

[8] 2009 (6) ALD 684 (DB)
[9] 2017 ACJ 1036

therefrom towards personal expenses, added 50% of income towards future prospects and assessed the dependency at Rs.15,000/-. By adopting the multiplier of '18', the loss of income was assessed at Rs.32,40,000/-. Further Rs.2,30,000/- towards loss of love and affection, Rs.25,000/- for funeral expenses and Rs.5,000/- for transportation were awarded. Thus, in total the Appellate Court enhanced the compensation to Rs.35,00,000/- from Rs.8,50,000/- awarded by the Tribunal.

In the facts and circumstances of the case and in considered view of this Court and having taken into consideration various judgments of the Hon'ble Supreme Court and this Court, referred supra, the appropriate multiplier applicable in the present case should be '18' as the deceased was within the age group of 15-20 years as per the ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[10]. Even accepting the income of the deceased as Rs.14,000/- as considered by the Tribunal, the annual income of the deceased would be Rs.1,68,000/- (Rs.14,000 X 12). In addition, the claimants are entitled for 40% towards loss of future prospects as per the judgment of the Hon'ble Supreme Court in ***Pranay Sethi (1 supra)*** followed in ***Nagar Mal case (7 supra)***, which comes to Rs.67,200/-. Thus, the total earnings of the deceased would be Rs.2,35,200/- (Rs.1,68,000 + Rs.67,200/-). If 50% is deducted therefrom towards personal expenses and the multiplier of '18' is applied, the loss of dependency would be Rs.21,16,800/-

[10] 2009 (6) SCC 121

[(Rs.2,35,200 X 50%) X 18]. That apart, the claimants are entitled for Rs.15,000/- towards funeral expenses. Therefore, the compensation awarded by the Tribunal is enhanced to Rs.21,31,800/-. Further, this Court is also of the view that the Tribunal erred in deducting Rs.1,00,000/- from the compensation arrived as the claimants have already claimed personal accident coverage of Rs.1 lakh as the same is nothing to do with the compensation awarded herein.

Though the compensation claimed by the claimants before the Tribunal was only Rs.20,00,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[11]***,*** in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.21,31,800/-. However, the claimants shall pay the difference of Court Fee for the excess amount of Rs.1,31,800/-.

Accordingly, the appeal is dismissed and Cross-objections are allowed. The compensation amount awarded by the Tribunal of Rs.10,76,000/- is enhanced to Rs.21,31,800/-, out of which, claimants 1 and 2-parents are entitled for Rs.8,00,000/- each and claimant No.3 is entitled for Rs.5,31,800/- with proportionate costs and interest. The appellant-Insurance Company shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with proportionate costs and interest @ 7.5% per annum, after deducting the amounts if any already

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[11] (2003) 2 SCC 274

deposited, payable by the appellant and R-4 jointly and severally within a period of one month from the date of receipt of a copy of this order. On such deposit, the claimants are at liberty to withdraw their respective share amounts.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

12th October, 2018
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