THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 560 OF 2011

JUDGMENT:

This appeal is filed by the appellants/claimants under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award dated 23.12.2010 passed by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram, in M.V.O.P.No.566 of 2010, wherein and whereby the Tribunal granted compensation of Rs.2,60,000/- against the claim of Rs.4 lakhs for the death of one B.Manikyam (hereinafter referred to as 'the deceased') in the accident.

2. The 1st appellant is the wife and the 2nd appellant is the son of the deceased. They filed claim petition claiming compensation of Rs.4 lakhs for the death of the deceased in the accident occurred on 06.07.2010 against the respondents, alleging that due to rash and negligent driving of lorry bearing No.AP27U 7479 driven by its driver, at a high speed, without blowing horn or following traffic rules, dashed against B.Manikyam, as a result of which he fell down and sustained severe head injury and other injuries all over the body and succumbed to injuries.

3. The 1st and 2nd respondents filed separate counters denying the material averments in the claim petition. They

denied the avocation, age and income of the deceased and contended that the compensation claimed by the claimants is excessive.

4. Based on the pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred resulting in death of the deceased viz., B.Manikyam due to the involvement of the motor vehicle (lorry) bearing No.AP27U 7479 when it was in use in a public place?

2) What is the correct age and income of the deceased as on the date of the accident?

3) Whether the petitioners are entitled to any compensation and, if so what quantum and from which of the respondents?

3) To what relief?

5. During the course of trial, the 1st claimant was examined as PW1 and got marked Exs.A.1 to A.4. On behalf of the 2nd respondent, Ex.B.1 – Insurance policy copy was marked and no oral evidence was adduced. On behalf of the 1st respondent, no oral or documentary evidence was adduced before the Tribunal.

6. The Tribunal, based on the evidence of PW1 and Exs.A.1 to A.4, held that the driver of the lorry bearing No.AP27U 7479 was involved in the accident on 06.07.2010 and due to the rash and negligent driving of the vehicle, it

dashed the deceased and the deceased died on his way to the hospital.

7. The Tribunal granted compensation taking the notional income of the deceased as Rs.2,500/- per month and his annual income was fixed at Rs.30,000/- and 1/3rd was deducted towards his personal expenses and arrived at net income of Rs.20,000/-. The Tribunal further held that the claimants have lost their annual financial dependency of Rs.20,000/- and multiplied the annual income with multiplier "11" taking the age of the deceased as "50". But, multiplier "11" was taken treating the deceased in the age group of 51 to 55 years and loss of dependency was calculated at Rs.2,20,000/- (Rs.20,000/- X 11) and in addition to that the claimants were granted Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The 1st claimant being the widow of the deceased awarded Rs.20,000/- towards loss of consortium. Thus, the Tribunal granted total amount of Rs.2,60,000/- with interest at 7.5% per annum. The Tribunal also held that the respondents 1 and 2 are jointly and severally liable to pay the compensation to the claimants.

8. The learned counsel for the appellants would contend that the Tribunal grossly erred in taking the monthly income of the deceased at Rs.2,500/- per month instead of Rs.250/- per day (Rs.7,500/- per month), claiming that the deceased is

a milk vendor and also used to do labour work in spite of the evidence of PW1. As per Ex.A.4 – post-mortem certificate, the age of the deceased is shown as 50 years. The Tribunal while accepting the age of the deceased as 50, but multiplier "11" was taken which is applicable to be age group of 51 to 55 years instead of multiplier "13" which is applicable to the age group of 45 to 50 years. The Tribunal ought to have been taken multiplier "13" as per the decision of the Hon'ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another*[1]. The Tribunal granted meagre amount under the heads of loss of estate, funeral expenses and loss of consortium. The appellants are entitled for higher compensation under conventional heads, as per the decision of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others*[2].

9. The learned counsel for the 2nd respondent/Insurance company would contend that the Tribunal has granted fair and just compensation to the appellants for the death of the deceased. The Tribunal has taken monthly income of Rs.2,500/- as the claimants failed to prove the income of the deceased at Rs.250/- per day claiming that the deceased is a milk vendor and agricultural coolie. However, the learned counsel could not oppose the claim of the appellants under

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[1] (2009) 6 SCC 121
[2] 2017(6) ALD 170 (SC)

the conventional heads as per the *Pranay Sethi case* (2 supra).

10. This Court found that the Tribunal has grossly erred in taking the monthly income of the deceased at Rs.2,500/- as the accident occurred on 06.07.2010. As per the judgment of the Hon'ble Supreme Court in *Sri Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited*[3], even the agriculture labour is entitled for Rs.4,500/- per month and as the deceased was aged about 50 years at the time of accident as per the post-mortem report (Ex.A.4), the Tribunal ought to have taken the multiplier "13" as the deceased was aged 50 years and comes within the age group of 45 to 50 and calculated the loss of dependency as Rs.4,500/- X 12 = Rs.54,000/- per annum and if 1/3rd is deducted towards his personal expenses i.e. Rs.54,000/- X 1/3, it comes to Rs.36,000/- and multiplier "13" is applied, the loss of dependency comes to Rs.36,000/- X 13 = Rs.4,68,000/-.

11. As per the *Pranay Sethi case* (2 supra), the appellants/claimants are entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, and the 1st appellant is entitled for Rs.40,000/- towards loss of consortium. In all, the appellants/claimants are entitled for Rs.70,000/- under conventional heads. Thus, the

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[3] 2011 (6) ALT 48 SC

appellants/claimants are entitled for Rs.4,68,000/- + Rs.70,000/- = Rs.5,38,000/- towards compensation under various heads.

12. The Tribunal has rightly granted interest at 7.5% per annum and the interest could not be said to be on higher side. Hence, the interest rate and apportionment of compensation as ordered by the Tribunal are hereby confirmed.

13. Though the compensation claimed by the claimants before the Tribunal was only Rs.4,00,000/-, in view of the decision of the Hon'ble Supreme Court in *Nagappa vs. Gurudayal Singh and others*[4], 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.5,38,000/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.1,38,000/-.

14. The appeal is accordingly allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

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[4] (2003) 2 SCC 274

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