

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.596 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 30.07.2010 passed in M.V.O.P.No.249 of 2009 by the Chairman, Motor Accidents Claims' Tribunal-cum-Principal District Judge, Medak at Sangareddy, granting compensation of Rs.3,60,000/- as against the claim of Rs.7,00,000/-, for the death of the deceased-Palle Ranemma.

The appellants-claimants filed claim petition alleging that on 28.05.2009 the deceased and her husband P.Ambadas i.e. third claimant boarded auto bearing No.AP23 W 7287 at Nizampet to go to Narayankhed, on the way when the auto reached near Darga Thanda, the bus belonging to the respondent-Andhra Pradesh State Road Transport Corporation came in opposite direction being driven by its driver in a rash and negligent manner with high speed and dashed against the auto, due to which the deceased received injuries and died on the way to hospital. The deceased was hale and healthy, aged about 23 years, running a tailoring shop at Nizampet under the name & style of 'Sai Ladies Tailoring Centre' and earning Rs.9,000/- per month. The marriage of the deceased was performed with claimant No.3 only 14 months prior to the accident and the deceased was the only daughter of claimant Nos.1 and 2.

The respondent-Corporation filed counter denying the entire allegations of the claim petition and also stated that the claim is excessive.

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

- 1) Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?

- 2) Whether the petitioners are entitled to compensation, if so, at what quantum and from whom?
- 3) To what relief?

On behalf of the claimants, PWs 1 to 3 were examined and Exs.A.1 to A.6 were got marked. On behalf of the respondent-Corporation, no oral and documentary evidence was adduced.

Based on the evidence available before it, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle i.e. bus bearing No.AP28 Z 2482. Thus, the Tribunal answered the issue No.1 in favour of the claimants. However, the Tribunal disbelieved the claim of the appellants that the deceased used to earn Rs.9,000/- per month by doing tailoring work and also disbelieved Ex.A.6 certificate issued by the Panchayat Secretary, Grampanchayat, Nizampet, to the effect that the deceased used to earn Rs.6,000/- per month, on the ground that he was not examined. In those circumstances, the Tribunal has taken the notional income of the deceased as Rs.2,500/- per month. After deducting 1/3rd therefrom towards her personal expenses, the monthly contribution of the deceased to her family was arrived at Rs.1,667/- and annual contribution at Rs.20,004/-. After applying the multiplier of '18', the Tribunal calculated the loss of dependency at Rs.3,60,072/-. Thus, the Tribunal granted the compensation of Rs.3,60,000/- along with interest @ 7.5% per annum from the date of petition and apportioned the amount between the claimants. Aggrieved by the quantum of compensation, the present appeal came to be filed.

Learned counsel for the appellants would contend that the Tribunal grossly erred in taking the notional income of the deceased as Rs.2,500/- per month though the evidence of PW.1, husband of the deceased, shows that the income of the deceased was Rs.9,000/- per month. The Tribunal has not granted any compensation under conventional heads. The appellants are entitled for Rs.70,000/- under

conventional heads in view of the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***¹. Learned counsel also contended that the appellants are entitled for 40% of income towards future prospects.

Sri N.Vasudeva Reddy, learned counsel for the respondent-Corporation, would contend that the Tribunal has rightly taken the notional income of the deceased as Rs.2,500/- as the claimants failed to prove that the income of the deceased was Rs.9,000/- by doing tailoring work. Learned counsel further contended that the claimants are not entitled for any compensation towards future prospects as the deceased was not a self employed person and not getting any fixed wages. Thus, he would contend that the Tribunal has awarded fair and just compensation and the appeal is liable to be dismissed.

From the material available on record, the Tribunal has rightly held that the accident was occurred due to rash and negligent driving of the driver of the offending bus bearing No.AP28 Z 2482. Further, there is no dispute that the deceased was doing tailoring work, but her income was not established by adducing proper evidence. This Court is of the view that the Tribunal erred in taking the notional income of the deceased as Rs.2,500/-. In ***Arun Kumar Agarwal and another vs. National Insurance Company Limited and others***², the Hon'ble Supreme Court held that the gratuitous services rendered by wife/mother with true love and affection to husband and children and managing household affairs cannot be equated with services rendered by others. It is not possible to quantify any amount in lieu of services rendered by wife/mother to the family. However, for award of compensation some pecuniary estimate has to be made. The word 'services' to be given a broad meaning and to be construed taking into account the loss of personal care and attention given by deceased house

¹ 2017(6) ALD 170 (SC)

² (2010) 9 SCC 218

wife. While observing so, the Hon'ble Supreme Court upheld the action of the Tribunal in taking the notional income of the deceased-house wife as Rs.5,000/- per month. Coming to the case on hand, though the deceased was doing tailoring work, even considering that she was a house wife, her income can be taken as Rs.5,000/- in view of the decision of the Hon'ble Supreme Court in **Arun Kumar (2 supra)**. Thus, the annual income of the deceased would be Rs.60,000/-. After deducting 1/3rd therefrom towards personal expenses and on applying the multiplier of '18' as the age of the deceased was 23 years at the time of accident, the loss of dependency would come to Rs.7,20,000/- (Rs.40,000/- X 18). That apart, in view of the ratio laid down in **Pranay Sethi (1 supra)**, the claimants are entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium. The claimants are not entitled for any amounts towards future prospects as the deceased was not a self employed or getting any fixed wages. Thus, in total, the claimants are entitled for Rs.7,70,000/- with costs and interest @ 7.5% per annum from the date of petition till the date of realization.

Though the compensation claimed by the claimants before the Tribunal was only Rs.7,00,000/-, in view of the decision of the Hon'ble Supreme Court in **Nagappa vs. Gurudayal Singh and others**³, 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.7,70,000/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.70,000/-. Out of the total compensation of Rs.7,70,000/-, the first and second claimants-parents of the deceased are entitled for Rs.2,50,000/- each with proportionate interest and the third claimant-husband of the deceased is entitled for Rs.2,70,000/- with costs and proportionate interest. The entire compensation amount, duly deducting

³ (2003) 2 SCC 274

the amounts already deposited, if any, shall be deposited to the credit of the O.P. before the Tribunal within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are entitled to withdraw their respective share amounts, subject to payment of excess Court Fee.

Accordingly, the appeal is allowed to the extent indicated above.

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

(M.GANGA RAO, J)

05.10.2018
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