THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No.632 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 15.10.2007 passed by the XI Additional Chief Judge (FTC), City Civil Court, Hyderabad, in O.P.No.2341 of 2006 whereby and whereunder the Tribunal partly allowed the claim of the appellants and awarded a sum of Rs.2,35,000/- towards compensation payable jointly and severally by the respondents along with costs and interest @ 7.5% per annum from the date of petition i.e.13.11.2006 till the date of realization, as against the claim of Rs.3,50,000/-.

Appellants-claimants filed claim petition under Sections 166 and 163-A of the Motor Vehicles Act stating that on 12.07.2006 while the deceased, who is the wife of the 1st appellant and mother of appellants 2 to 4, was proceeding in an auto at the outskirts of Aler Town, the offending lorry bearing No.AP9X-7709 being driven by its driver in a rash and negligent manner, came in opposite direction and dashed the auto in which the deceased and some others were traveling, due to which, the deceased sustained injuries and succumbed to injuries on the spot itself. At the time of the accident, the deceased was hale and healthy, aged about 45 years and running a diary and getting Rs.5,000/- per month. Due to her sudden demise, the appellants lost her love and affection and also they are deprived to have her support.

The first respondent was set *ex parte* and the second respondent filed a counter affidavit denying the averments of the claim petition and specifically stating that the owner of the vehicle did not inform the second respondent about the alleged accident, which is in violation of policy conditions, and therefore the second respondent is not liable to pay compensation to the claimants.

Based on the above pleadings, the following issues were framed for trial:

1) Whether the pleaded accident was occurred resulting in the death of Pallapu Bharathamma and if so was it due to rash and negligent driving of the vehicle bearing registration No.AP9X-7709?
2) Whether the petitioners are entitled for compensation and if so to what quantum and what is the liability of respondents?
3) To what relief?

On behalf of the claimants, PWs 1 to 3 were examined and Exs.A.1 to A.6 were marked. No evidence was adduced on behalf of the respondents.

The Tribunal after considering the evidence of P.W.1 and P.W.3-T.Dasharatha and Exs.A.1 to A.6 came to the conclusion that while the deceased was traveling in the auto along with other passengers, the offending lorry driven by its driver in a rash and negligent manner dashed the auto in which the deceased was traveling, due to which the deceased and other inmates of the auto sustained injuries and the deceased succumbed to injuries sustained by her. The Post-mortem certificate under Ex.A.4 also shows that the deceased died due to the injuries. Accordingly, the Tribunal held issue No.1 in favour of the claimants.

As per the evidence of PWs 1 and 2, the deceased used to earn Rs.5,000/- per month by doing milk business. But, the Tribunal disbelieved the same stating that there is no evidence in support of such claim. Hence, the Tribunal has taken the notional income of the deceased as Rs.2,500/- per month and after deducting 1/3rd therefrom towards personal expenses and after applying the multiplier of '11', as the deceased was aged 50 years as per the post-mortem certificate under Ex.A.4, the Tribunal arrived the loss of dependency at Rs.2,20,000/-. In addition to the above, the Tribunal has granted Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium and in total the Tribunal has granted Rs.2,35,000/- towards compensation along with costs and interest @ 7.5% per annum from the date of petition till the date of realization payable by the respondents jointly and severally. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellants-claimants filed the present appeal.

Sri B.Parameswara Rao, learned counsel appearing for the appellants, would contend that the Tribunal grossly erred in disbelieving the income of the deceased as Rs.5,000/- as she was doing milk business and lookafter agriculture as stated by PWs 1 and 2. He further contended that the Tribunal has granted meager amount of Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium. As per the judgment of the Hon'ble Supreme Court in ***National***

Insurance Co. Ltd. Vs. Pranay Sethi[1], the appellants are entitled for Rs.70,000/- under conventional heads.

Learned Standing Counsel appearing for the respondent-Insurance Company would contend that the Tribunal has rightly taken the notional income of the deceased as Rs.2,500/- when there is no evidence to support the claim of the appellants that the deceased used to earn Rs.5,000/- per month. The Tribunal has granted just and fair compensation to the appellants. Hence, the impugned award passed by the Tribunal warrants no interference by this Court.

In the facts and circumstances of the case and in considered view of this Court, there is no dispute with regard to the death of the deceased Bharathamma in the accident that took place on 12.07.2006 due to rash and negligent driving of the driver of the offending lorry bearing No.AP-9X-7709 insured with the second respondent-Insurance Company and the Tribunal rightly held that the respondents are jointly and severally liable to pay compensation to the appellants-claimants. But, the Tribunal grossly erred in taking the notional income of the deceased as Rs.2,500/- per month disbelieving the evidence of PWs 1 and 2, who deposed that the deceased used to do milk business and lookafter agriculture. When no contra evidence was adduced in that regard, the Tribunal ought to have taken the monthly earnings of the deceased as Rs.5,000/- which is fair and bonafide. Even as per the decision of the Hon'ble Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance***

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[1] 2017(6) ALD 170 (SC)

Insurance Company Limited[2], the income of the daily wage earner has to be taken at Rs.4,500/-. In the instant case, the deceased was doing milk business and also lookafter the agriculture. Hence, the income of the deceased can be taken at Rs.5,000/- as supported by the evidence of PWs 1 and 2. Thus, the annual income of the deceased will be Rs.60,000/-. If 1/3rd is deducted towards personal expenses of the deceased, the annual contribution of the deceased to her family comes to Rs.42,000/-. In view of the ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma & others vs. Delhi Transport Corporation & another***[3], the appropriate multiplier would be '13' as the deceased comes within the age group of 46-50 years. Thus, the loss of dependency would be Rs.5,46,000/-. In addition to the above, the claimants are entitled for Rs.70,000/- under conventional heads i.e. Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium. That apart, appellant Nos.2 to 4, who are the unmarried daughters of the deceased, are also entitled for Rs.1,00,000/- towards loss of love and affection. Thus, in total, the appellants-claimants are entitled for Rs.7,16,000/- along with 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.3,50,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and***

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[2] 2011 (6) ALT 48 (SC)
[3] (2009) 6 SCC 121

***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.7,16,000/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.3,66,000/-.

Accordingly, the appeal is allowed enhancing the compensation amount granted by the Tribunal from Rs.2,35,000/- to Rs.7,16,000/-, out of which, the first appellant-husband of the deceased is entitled for Rs.1,16,000/- along with proportionate interest and costs and the remaining claimants i.e. appellants 2 to 4 are entitled for Rs.2,00,000/- each along with proportionate interest. The respondents are directed to deposit the entire compensation amount, after deducting the amounts already deposited, with interest at 7.5% per annum within a period of one month from the date of receipt of a copy of this order. Appellants can withdraw their respective share amounts whenever such deposit is made, subject to payment of difference of Court Fee.

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

M.GANGA RAO, J

Dated 24th August, 2018

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[4] (2003) 2 SCC 274