THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.1301 OF 2011

JUDGMENT:

Appellant-claimant filed this appeal against the order and decree dated 13.03.2001 passed in O.P.No.1194 of 1998 by the Chairman, Motor Accidents Claims Tribunal(Principal District Judge), Nalgonda, granting compensation of Rs.1,22,400/- as against the claim of Rs.2,00,000/- for the death of the deceased-Buddaraju Rama Krishna Raju, son of the appellant, in the motor accident occurred on 01.10.1998.

The appellant, mother of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act stating that on 01.10.1998 the deceased, who was working as Gumasta in Vijaya Ganapathi Transport, Vishnupuram, went to Shivalayam, Waddapally, along with all transport vehicles and drivers of the vehicles for performing pooja. At that time, the driver of the lorry bearing No.AP-16-W-1586 parked the lorry in a negligent way in reverse gear, got down from the bus and the lorry suddenly moved in reverse direction and dashed the deceased, due to which, he received grievous injuries and died on the spot. It was further stated that the deceased was hale and healthy, aged 24 years, unmarried, earning Rs.3,000/- per month by working as Gumasta in the Transport office and thereby claimed compensation of Rs.2 lakhs.

R.1-owner of the offending lorry filed counter affidavit denying the averments of the claim petition, further stating that the accident was occurred due to the negligence on the part of the deceased and as the lorry was insured with R-2, compensation payable, if any, shall be payable only by R.2.

R.2-Insurance Company filed counter affidavit denying the averments of the claim petition and stating that the claim was excessive and prayed to dismiss the claim.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

1) Whether the accident has taken place due to rash and negligence on the part of the driver of the Lorry bearing No.AP-16-W-1586?
2) Whether the petitioner is entitled to any compensation, and if so, to what amount?
3) To what relief?

On behalf of the appellant, PWs 1 and 2 were examined and Exs.A.1 to A.6 were got marked. On behalf of the respondents, no oral and documentary evidence was adduced.

Based on the evidence of P.W.2-eye witness to the incident and cleaner of the offending lorry, who deposed that on the date of incident, while the deceased was giving instructions to the driver of the lorry in decorating the lorry, at that time, the offending lorry moved back side and ran over the deceased due to which he died on the spot, coupled with Exs.A.1 and A.2, copies of FIR and charge sheet, the Tribunal held that the accident was occurred due to the negligence on the part of the driver of the lorry since he has not kept any stones after parking the lorry in the slope surface, and thereby the Tribunal answered issue No.1 in favour of the appellant.

As regards quantum of compensation, the Tribunal has taken the income of the deceased as Rs.600/- per month disbelieving the claim of the appellant that the deceased used to earn Rs.3000/- per month, on the ground that no material in proof thereof was filed. After applying the multiplier '17', the Tribunal granted Rs.1,22,400/- towards compensation along with costs and interest at 12% per annum from the date of petition till realization. Aggrieved by the quantum of compensation, the present appeal is filed seeking enhancement.

Learned counsel for the appellant would contend that the Tribunal grossly erred in taking the income of the deceased as Rs.600/- per month ignoring the evidence of P.W.1 that the deceased used to earn Rs.3,000/- per month; the Tribunal has wrongly applied the multiplier of '17' instead of '18', as the deceased was aged 24 years at the time of accident, as per the judgement of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[1]; as the deceased was working as Gumastha and earnings fixed wages, the appellant is entitled for future prospects as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[2]; the Tribunal has not granted any amounts towards loss of estate and funeral expenses; and thus he seeks enhancement of the compensation.

Per contra, learned counsel for the respondent-Insurance Company would contend that in the absence of any supporting evidence, the Tribunal has rightly taken the income of the deceased as Rs.600/- per month and adopted the multiplier of '17'. The Tribunal has granted just and fair compensation and the same needs no interference by this Court. Hence, he prayed to dismiss the appeal.

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[1] 2009 (6) SCC 121
[2] 2017 Law Suit (SC) 1093

In the facts and circumstances of the case and in considered view of this Court, the Tribunal erred in taking the income of the deceased as Rs.7,200/- per annum, on the ground that no supporting evidence was adduced to substantiate the evidence of PW.1 that the deceased used to earn Rs.3,000/- per month. The Hon'ble Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***[3], held that the income of the daily wage earner has to be taken as Rs.4,500/-. In the case on hand, the accident took place in the year 1998, deceased was aged about 24 years and unmarried. He was working as Gumasta in Vijaya Ganapathi Transport, Vishnupuram, and the same was established from the evidence of P.W.2. Hence, it would be reasonable, just and proper to consider the earnings of the deceased as Rs.3,000/- per month, as claimed by the appellant. Further, as the deceased was a fixed wage earner and aged below 40 years, as per the ratio laid down in ***Pranay Sethi (2 supra)***, the appellant is entitled for 40% of the income i.e. Rs.1200/- towards loss of future prospects. Thus, the earnings of the deceased would be Rs.4,200/- (Rs.3000+Rs.1200/-). As the deceased was unmarried and aged about 24 years at the time of the accident, ½ of the income has to be deducted towards personal expenses and the appropriate multiplier would be '18', as per the ratio laid down in ***Sarla Verma (1 supra)*** . Thus, the loss of dependency works out to Rs.4,53,600/- [(Rs.4200*50%)X12X18). That apart, the appellant, being the mother of the deceased, is entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses as per the ratio laid down in ***Pranay***

[3] 2011 (6) ALT 48 (SC)

Sethi (2 supra). Thus, the appellant is entitled for the total compensation of Rs.4,83,600/- along with costs and interest @ 7.5% per annum instead of 12% per annum as ordered by the Tribunal, as this Court thinks fit to grant interest @ 7.5% per annum keeping in view the bank rate of interest prevailing at the relevant period. Though the claim of the appellant before the Tribunal was only for Rs.2 lakhs, I.A.No.1/2018 was filed before this Court under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the claim from Rs.2 lakhs to Rs.5 lakhs and the same was allowed by this Court, subject to payment of difference of Court fee.

Accordingly, the compensation of Rs.1,22,400/- granted by the Tribunal is hereby enhanced to Rs.4,83,600/- 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. The respondents shall deposit the entire compensation amount, duly deducting the amounts already deposited, if any, 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 appellant is entitled to withdraw the same, subject to payment of difference of court fee.

Accordingly, the appeal is allowed in part 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)

23.11.2018
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