THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.2925 OF 2014

JUDGMENT:

Appellants-claimants filed this appeal against the order and decree dated 09.01.2012 passed in O.P.No.965 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nalgonda, granting compensation of Rs.5,40,000/- as against the claim of Rs.10,00,000/- for the death of the deceased-Vanam Narsimha in the motor accident took place on 25.06.2008.

Appellants filed claim petition under Section 166 read with 140 of the Motor Vehicles Act against the respondents alleging that on 25.06.2008 while the deceased and his relative Venkatesham were proceeding on Hero Honda motor cycle bearing No.AP-09/BH-3101, when they reached Aregudem 'X' road on N.H.No.9 of Panthangi Village outskirts, at about 4.00 p.m. one lorry bearing No.AP-24/W-7736 with cement load came in their opposite direction being driven by its driver in a rash and negligent manner with high speed and dashed against the motor cycle, due to which the deceased and the rider of the motor cycle Venkatesham both sustained serious injuries and died on the spot. It was further stated that the deceased was working as a motor winding mechanic, also doing electrical shop business and earning Rs.8,000/- per month. Hence, they filed claim petition seeking compensation of Rs.10,00,000/- against the respondents.

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

The second respondent-Insurance Company filed a counter affidavit denying the material averments of the claim petition and alleging that the rider of the motor cycle was at fault. Hence, prayed for dismissal of the claim petition.

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

1) Whether the deceased by name Vanam Narsimha died due to the rash and negligent driving of the driver of Lorry bearing No.AP-24/W-7736?
2) Whether the claimant is entitled for compensation, if so, what amount and from whom?
3) To what relief?

On behalf of the appellants, PWs 1 and 2 were examined and Exs.A.1 to A.9 were got marked. On behalf of the respondents, no witness was examined, however, Ex.B.1 was got marked. Second respondent-Insurance Company filed petition under Section 170 (b) of the M.V.Act and the same was allowed.

The Tribunal based on the evidence of PW.1-wife of the deceased, P.W.2-eye witness to the accident and Exs.A.1 to A.4 held that the accident took place due to the rash and negligent driving of the driver of the offending lorry belonging to R.1 and insured with R.2. As regards quantum of compensation, the Tribunal having held that the deceased was skilled labour and having electrical business, has taken the earnings of the deceased as Rs.5,000/- per month i.e. Rs.60,000/- per annum. After deducting 1/3rd therefrom towards personal expenses of the deceased, the Tribunal has arrived the annual contribution of the deceased to his family as Rs.40,000/- per annum. After applying the multiplier ‘13’ as the deceased was aged about 49 years and belonged to age group 46-50 years as per the decision of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[1], the loss of dependency was arrived at Rs.5,20,000/-. In addition, the Tribunal has granted Rs.5,000/- towards transportation and funeral expenses, Rs.5,000/- towards loss of estate and love & affection and Rs.10,000/- to the first appellant towards loss of consortium. Thus, in all, the Tribunal has granted the compensation of Rs.5,40,000/- along with proportionate costs and interest @ 6% per annum from the date of petition till realization payable by both the respondents jointly and severally.

The learned counsel for the appellants would contend that the Tribunal granted very less amounts towards funeral expenses, loss of estate and loss of consortium. He would further contend that the Tribunal has not granted any amounts towards future prospects. Accordingly, he seeks enhancement.

Per contra, the learned counsel for the Insurance Company would contend that the Tribunal has rightly granted compensation and the appeal is misconceived and liable to be dismissed.

The occurrence of accident and death of the deceased in the accident are not in dispute.

Having heard the rival contentions and perused the record, this Court came to the conclusion that in view of the ratio laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[2], the appellants are entitled for Rs.15,000/- towards funeral expenses, appellants 2

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

and 3 are entitled for Rs.15,000/- towards loss of estate and the first appellant, being the wife of the deceased, is entitled for Rs.40,000/- towards loss of consortium as against the amounts granted by the Tribunal. Rs.5,000/- towards transportation and funeral expenses, Rs.5,000/- towards loss of estate and love & affection and Rs.10,000/- to the first appellant towards loss of consortium. Further, as held by the Tribunal and based on the evidence on record, the deceased was having an Electrical shop under the name and style of 'Santhosh Electrical'. Thus, the deceased, being a self-employed and aged about 49 years, is entitled for future prospects @ 25%. As the Tribunal has taken the monthly income of the deceased at Rs.5,000/-, 25% thereof i.e. Rs.1250/- has to be added to the income of the deceased towards future prospects. Then, the monthly earnings of the deceased would be Rs.6,250/- (Rs.5000 + Rs.1250/-) and Rs.75,000/- per annum. If 1/3rd is deducted therefrom towards personal expenses, the annual contribution of the deceased to his family would be Rs.50,000/-. After applying the multiplier '13' as rightly taken by the Tribunal, the loss of dependency would be Rs.6,50,000/-. In addition, the appellants are entitled for Rs.70,000/- under conventional heads, as stated above. Thus, the claimants are entitled for the total compensation of Rs.7,20,000/- along with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization payable by both the respondents jointly and severally.

Accordingly, the appeal is partly allowed enhancing the compensation of Rs.5,40,000/- granted by the Tribunal to

Rs.7,20,000/- along with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization. The respondent-Insurance Company shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with proportionate costs and interest, after deducting the amounts if any already deposited, within a period of one month from the date of receipt of a copy of this order. On such deposit, the first appellant can withdraw Rs.4,20,000/- along with proportionate costs and interest and the remaining appellants can withdraw Rs.1,50,000/- each along with proportionate costs and interest.

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

(M.GANGA RAO, J)

21.12.2018
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