

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.1409 of 2010

JUDGMENT :

The appellant/claimant aggrieved by the order and decree dated 22.3.2010 in O.P.No.425 of 2007 on the file of the Motor Accidents Claims Tribunal / Principal District Judge, Ranga Reddy District, L.B.Nagar, awarding Rs.2,89,235/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization against respondents 1 and 2 jointly and severally, which shall be deposited within one month from the date of the order, while rejecting the rest of the claim, preferred this appeal.

2. The contention of the appellant/claimant is that the Tribunal erred in awarding Rs.9,000/- under three heads i.e., Transportation, extra-nourishment and attendant charges, as he had to engage attendant for a period of one year by paying salary of Rs.2,000/- per month. The Tribunal ought to have awarded Rs.5,000/- towards transportation to Hospital and Rs.10,000/- towards damage to the motorcycle.

It is further contended that the Tribunal ought to have considered the disability of the appellant at 50% and loss of earnings at 100%, since the appellant was removed from the employment following the amputation as deposed by P.W.3 and also the evidence of P.W.3 is that his salary would have been enhanced at Rs.600/- per annum. The Tribunal ought to have seen that the appellant was

26 years old, young and energetic healthy person and had he not sustained amputation of right foot, his career would have been bright and the accident also affected his marital life and the Tribunal ought to have awarded just compensation.

3. The brief claim of the appellant is that on 12.2.2007 he along with his father was proceeding on motorcycle bearing No.AP 5 AG 1140 on the extreme left side of the road and when they reached near JNTU college cross road, Kukatpally, at that time auto bearing No.AP 9V 9858 driven by its driver with high speed in rash and negligent manner dashed the motorcycle. As a result, the appellant and his father fell down from the motorcycle and he sustained crush injury to right foot resulting amputation, fracture of right leg, injuries on backside, besides lacerated injuries to the hands.

Immediately, he was shifted to ARK Hospital, Kukatpally. After discharge, he was shifted to NIMS Hospital, Hyderabad, where he underwent operation for right foot and flap coverage were fixed and external fixators were fixed, debridgement was done and POP was applied.

After discharge from the NIMS, he was undergoing periodical check ups in the said hospital and even his motorcycle was completely damaged.

By the date of accident, the appellant was hale and healthy and 26 years old and he used to earn Rs.4,000/- per month by

working in the private Coffee plant, Unit-IV, Patancheru and contribute the earnings for the welfare for his family. On account of injuries, he is confined to bed and unable to do any work and he has to depend upon attendants for any work. He permanently became disabled and lost all hopes and aspirations in life.

The 1st respondent, who is the owner and the 2nd respondent, who is the insurer of the offending auto, are jointly and severally liable to pay the compensation.

4. Respondents 1 and 2 filed separate counters denying the accident, age, occupation and income of the petitioner/claimant. Respondents 1 and 2 pleaded that the accident occurred due to the own fault of the petitioner himself and they are not liable to pay any compensation.

5. Having considered the pleadings of both parties, following issues were settled for trial :

- (1) Whether the pleaded accident occurred resulting in injuries and amputation to the petitioner and if so, was it due to the fault of the driver of the 1st respondent's auto rickshaw bearing No.AP 9V 9858 or the petitioner himself and if both are responsible what is the responsibility of each of them?
- (2) Whether the auto rickshaw bearing No.AP 9V 9858 belongs to the 1st respondent and stood insured with the 2nd respondent insurance company on the date of the accident and if so, whether that policy covers the risk of the petitioner?
- (3) Whether the petitioner is in principle entitled to compensation and if so, to what amount and what is the liability of respondents?
- (4) To what relief?

6. In support of the claim, P.Ws.1 to 3 were examined and Exs.A1 to A15 and Exs.C1 and C2 were got marked. On behalf of respondents, no oral evidence was adduced, but Ex.B1 – Insurance Policy was got marked.

7. Now, the point that arises for determination is :

“Whether the Award is suffering from any legal infirmities warranting interference in the appeal?”

The learned counsel for the appellant/claimant contended that the Award passed by the Tribunal is contrary to law, weight of evidence and the Tribunal erred in awarding the meagre amounts and it has not awarded just compensation. The Tribunal also erred in applying loss of earnings at 25% and it should be 100%, because the right leg foot was amputated and the appellant is not doing any other work. The amounts awarded are very meagre and no amounts were awarded to damage to the motorcycle.

Whereas, the respondents contended that the accident was only due to the fault of the claimant himself. The amount granted is abnormal and the order does not suffer from any legal infirmities warranting interference.

8. There is no serious contest with regard to the finding of rash and negligence is concerned.

The appellant/claimant, who is injured himself, filed evidence affidavit as PW.1, reiterating what he has pleaded in the claim petition.

9. The consistent evidence of P.W.1 is that on 12.2.2007 at 5.30 PM, while he along with his father Rajarathnam was proceeding on motor cycle bearing No.AP 5 AG 1140, on the extreme left side of the road and when they reached near JNTU College cross road, Kukatpally, at that time, auto bearing No.AP-9-V-9858 came in high speed in rash and negligent manner and dashed the Hero Honda motorcycle and due to sudden impact, PW.1 and his father fell down from the motor cycle.

10. Ex.A1 is the certified copy of the FIR and Ex.A.2 is the certified copy of charge sheet. In Ex.A1, there is a specific assertion of PW.1 that basing on which a case in Crime No.138 of 2007 was registered on 12.2.2007 at 20.30 hours with regard to the accident occurred on 12.2.2007 at 17.30 hours. In this report of FIR, there is a clear assertion that while the complainant-claimant proceeding towards Kukatpally from Patancheru on his motor cycle No.AP 5 AG 1140 and on reaching JNTU Cross roads, auto driver No.AP 9 V-9858 came up with high speed in rash and negligent manner and dashed the complainant's motor cycle. The Investigating Officer also, after thorough investigation, filed Ex.A.2-charge sheet against the driver of the auto-A. Bala Kondanna @ Balu, alleging that while PW.1 and his father-Rajarathnam were proceeding to Kukatpally

from Patancheru on their Hero Honda bearing No. AP 5 G 1140, PW.1 as a rider and his father as a pillion rider, on NH.9, in front of JNTU college, one seven seater auto bearing No.AP 9 V 9858, driven by its driver in rash and negligent manner, dashed the Hero Honda, due to which, both rider and pillion rider of the bike were fell down.

That, though PW.1 was cross-examined at length, could not elicit any favourable material to discard the evidence of PW.1. The cross-examination of PW.1 further support the case of the claimant that the accident occurred near JNTU 'Y' junction on NH.9. There are traffic signals at 'Y' junction. PW.1 and the crime vehicle auto were proceeding in same direction and PW.1 was in front of the auto. The only suggestion to PW.1 is that accident was not occurred due to crime vehicle and according to Ex.A5, the accident was on 02.2.2007 but not on 12.2.2007.

11. Ex.A5 is the discharge summary issued by the Nizam's Institute of Medical Sciences, (for short, NIMS) Panjagutta, Hyderabad, which shows that PW.1 was admitted in the said hospital on 13.2.2007 and DOS1 was done on 13.2.2007, DOS2 was done on 25.2.2007 and discharged from the hospital on 08.3.2007. Ex.A3 is the medico legal record with MLC.No.1289 issued by the ARK Hospitals, Kukatpally, Hyderabad. It reveals that PW.1 was brought to ARK Hospitals accompanied by police constable of Kukatpally police station and he was examined on 12.2.2007 at 5.45 PM. Ex.A4 is the out-patient card of PW.1 of ARK Hospitals dated:12.2.2007.

PW.1 was admitted in NIMS on 13.2.2007. Whereas, he was admitted on 12.2.2007 itself in ARK Hospitals at 5.45 PM, immediately after the accident. The respondents mostly relied on the clinical note in Ex.A.5 wherein it was mentioned that a 27 year old male patient alleged to have sustained injury to right foot due to RTA hit and run over by a auto while he was travelling in a two wheeler at around 6 PM on 2.2.2007 near JNTU chourasta, Hyderabad. It is the clinching evidence of PW1 that in Exs.A1, A2 and A3, the accident occurred in front of JNTU College, National Highway-9 on 12.2.2007. The FIR was registered immediately at 20.30 hours by recording the statement of PW.1 by the Assistant Sub-Inspector of police on 12.2.2007 at 18.30 hours at ARK Hospitals, K.P.H.B Colony, Kukatpally. The entire material on record and the evidence of PW1 supported by Exs.A4 and A5 establishes that the accident occurred on 12.2.2007 on National Highway-9 near JNTU 'Y' Junction absolutely involving auto bearing No.AP 9 V 9858. Immediately, after the accident on 12.2.2007 at 5.45 PM i.e., after 15 minutes of accident, PW.1 was shifted to ARK Hospitals due to serious nature of injury and discharged from ARK Hospitals, and later, on the advise of the doctor, he was shifted to NIMS as per Ex.A5. He was admitted in NIMS on 13.2.2007. Therefore, the contention of respondents that PW.1 sustained injuries on 02-2-2007 but not on 12.2.2007 is untenable and cannot be sustained.

Thus, in the facts and circumstances discussed above and the findings therein, I am of the considered view that the Tribunal, having discussed the evidence of PW.1 elaborately and marshalling the facts and considering the Exs.A1, A2, A3, A4 and A5, came to the conclusion that the accident was occurred on 12.2.2007 due to rash and negligent driving of the driver of auto rickshaw bearing No.AP 9 V 9858, in the absence of any evidence produced by the respondent No.1 to his contention that the DCM van was also near and the same was responsible for the accident. The finding of the Tribunal is legal, tenable and do not suffer from any legal infirmities warranting interference.

12. In the written statement, the respondent No.1 admitted that he is the owner of the auto rickshaw bearing No.AP 9 V 9858 and the same is insured with respondent No.2. Respondent No.2 has not adduced any evidence but simply filed copy of the policy marking it as Ex.B1. None was examined to rebut the evidence of PW.1, either by the respondent No.1 or respondent No.2.

13. On a reading of Ex.B1, it shows that the respondent No.1 is the owner of the auto rickshaw bearing No.AP-09-V-9858 and the respondent No.2 is the insurer. The policy was in force from 07.06.2006 to 06.06.2007 and whereas the accident was occurred on 12.2.2007 by which date Ex.B1 policy was in force.

14. The further contention of respondent No.2 is that the respondent No.1 violated the terms and conditions of the policy, thereby the respondent No.2 is exonerated from its liability. But the respondent No.2 did not choose to enter into witness box and depose any evidence. Absolutely, there is no piece of paper filed in the Court by the respondent No.2. Absolutely, there is no evidence to support the evidence of respondent No.2 that respondent No.1 violated the terms and conditions of Ex.B1-Policy on any of the grounds mentioned in section 149 of the Motor Vehicles Act. Thus, respondent No.2 is the insurer of the offending auto rickshaw bearing No.AP-9-V-9858 and in the absence of proof of any violation of conditions under Ex.B1-Insurance policy, it cannot absolve its liability under Ex.B1 policy.

15. Further, with regard to nature of injuries and disability, there is an evidence of PW.1 wherein unimpeachable evidence is that he sustained crush injury to his right foot resulting into amputation and fracture of right leg above the knee and he also received spinal cord injury and other multiple injuries all over the body and immediately, he was shifted to ARK Hospitals and he was admitted as in-patient on 12.2.2007 at 5.45 PM as per Ex.A3-Medico Legal Record and he was examined at 5.45 PM wherein it was clearly mentioned as crush injury to right foot which is grievous in nature and so, he was referred to Government Gandhi Hospital. Ex.A4 is the out-patient card in the name of PW.1 with Reg.No.56865, admitted on

12.2.2007, wherein it was also mentioned that it is a case of RTA fracture of crush injury of right foot and ASD done and he was referred to Government Gandhi Hospital for further management.

16. In the above circumstances and in view of the consistent evidence of PW.1 supported by Exs.A1, A2, A3 and A4, I am of the considered view that there is mention of crush injury to right foot and for better treatment, PW.1 was referred to Government Gandhi Hospital as per endorsement in Ex.A.3 and also Ex.A.4.

17. The further evidence of PW.1 is that for better treatment, after discharge from the ARK Hospitals, on the advice of the doctor, he was shifted to NIMS, Panjagutta, Hyderabad, wherein he was admitted and undergone operation to right foot and flap coverage were fixed and external fixators were fixed, debridgement was done and POP was applied. PW.2 is the doctor who treated the PW.1 in NIMS. The corroborating evidence of PW.2 is that PW.1 was admitted in NIMS on 13.2.2007 for crush injury to his right foot, right fore foot amputation was done on 13.2.2007. Flap coverage, skin grafting was done by Plastic Surgeons on 25.2.2007. PW.1 was discharged from the Hospital on 8.3.2007. Ex.A5 is the discharge summary which support the evidence of PW2-doctor and also injury of PW.1 and his admission in the Hospital i.e., in NIMS on 13.2.2007 and amputation of right fore foot was done on 13.2.2007. Flap coverage skin grafting was done by Plastic Surgeons on 25.2.2007. The patient was

discharged on 8.3.2007. Under the clinical note in Ex.A5, it is noted that there is extremely degloved injury of right foot circumferential degloved involving entire dorsum and sole except heel. Exposing the dorsal tendons and plantar tendons. Amputation of 5th toe, loss of vascularity to other toes. Posterior tibial vessels felt. In the discharge card-Ex.A5, the procedure done by the clinical staff is also mentioned. The said procedure is that, Under Tourniquet control debridement right foot done with trans metatarsal disarticulation. Free LD flap cover to posterior tibial vessel and kept it extra corporally and pedicle grafted. Sole FTSG applied. Distal flap necrosed revision amputation meta tarsal shaft level and flap used to cover the bone stumps. HBOT given after 1 week, wound improved but test SSG graft not taken in view of infection, planned for discharge and readmission after 2 weeks on 22.3.2007.

18. It is also corroborating and consistent evidence of PW.1 and 2 that again PW.1 was readmitted under Plastic Surgeon on 19.4.2007, and DOS1 done on 20.4.2007 which is supported by Ex.A.6-discharge card issued by the NIMS, Hyderabad. After readmission in the said Hospital, it was observed under procedure that, Under SA wound is preponed by scarapping unhealthy granulation. SSG harvested from the left thigh and made stamp sizes and applied over row area and discharged from the Hospital on 23.4.2007, after doing skin grafting on 20.4.2007.

19. It is also the evidence of PW.1 that after discharge from the NIMS, he was periodically undergoing medical check ups for which he incurred expenditure towards transportation and medical, nearly Rs.1,00,000/-. Because of amputation of his leg, he was removed from service, thereby, sustained loss of income of 100%. The doctor who treated PW.1 is the proper person to speak about disability and gravity of injuries and also loss of percentage and also loss of earning capacity.

It is the further evidence of PW.2 that he issued Ex.A9- disability certificate and the disability is 50% in right lower limb which is permanent partial and he was confronted Exs.A5 and A6- discharge cards issued by NIMS. Ex.A.7 is the medical bills for Rs.21,555/-. Though PW.2 was cross-examined at length, there is nothing to suggest and prove. The only suggestion is that there is no disability to the patient and he is speaking falsehood only to get compensation. In the entire evidence of PW.1, he does not speak about loss of earning capacity. Therefore, there is no medical evidence to the effect of loss of any earning capacity. As per Ex.A.5, there is extremely degloved injury of right foot circumferential degloved involving entire dorsum and sole except heel. Exposing the dorsal tendons and plantar tendons. Amputation of 5th toe, loss of vascularity to other toes. Posterior tibial vessels felt. Therefore, there is only amputation of 5th toe.

In Ex.A.9- disability certificate, the nature of disability is mentioned as 'fore foot amputation-right side' and extent of disability is 50% of permanent partial disability in right lower limb and he is physically handicapped. So, even as per Ex.A.9, it is only fore foot, amputation of right side and according to Ex.A.5, it is the amputation of 5th toe. Similarly, in Ex.A.6, it is diagnosed as crush injury right foot with circumferential loss of skin, treated with debridement + free LD flap + SSG. Partial loss of flap and skin graft and got raw areas. Under SA wound is preponed by scarapping unhealthy granulation. SSG harvested from the left thigh and made stamp sizes and applied over raw area. Doctor-PW.2 do not speak whether PW.1 can work as usual or can do any other work than he was working earlier in Copper Plant, Unit-IV, Patancheru. Further, PW.1 also do not speak about whether he can do any other work apart from the regular work.

20. In such circumstances, the Tribunal having considered the corroborating evidence of PWs.1 and 2 and the documentary evidence under Exs.A3 to A6, came to conclusion that the appellant/claimant suffered serious crush injury on his right foot. According to PW.2 and Ex.A5, appellant/claimant suffered amputation of fore foot on his right leg i.e., amputation of 5th toe, loss of vascularity to other toes. The same fact is also further corroborated by Ex.A.11-photograph i.e., amputation of 5th toe and resulting loss of vascularity to other toes and accordingly, PW.2 assessed disability of 50%, which is partial and permanent.

21. The further finding of the Tribunal with regard to loss of earning is that, as per the evidence of PWs.1 and 2 and Ex.A5, the appellant/claimant suffered amputation of only fore foot of right leg. In Ex.A9-disability certificate issued by NIMS, PW.2 mentioned disability as 50% partial and permanent. It is not the case of PW.1 or the evidence of PWs.1 and 2 that the appellant had lost his entire right foot or portion of the right leg, it is also not the evidence on record that PW.1 cannot do any other job relating to the desk work. Having considering all these facts, the Tribunal came to the opinion that the disability is partial and permanent which is fixed at 25% and accordingly held that because of partial and permanent disability, the appellant / claimant is entitled for loss of future earnings.

22. Coming to the income of PW.1, the evidence of PW.1 is that he was 26 year old, hale and healthy, young and energetic and does not have any bad habits. Prior to the accident, he was working in Copper Plant, Unit-IV, Patancheru, and he used to draw a sum of Rs.4,600/- per month as salary but due to amputation of his leg, he was removed from service, thereby, sustained loss of income of 100%. Had he not involved in road accident, he would have earned more than Rs.6,000/- per month.

23. To prove the earning income, the appellant / claimant examined junior officer working in H.R. Department in Vijay Electricals Limited, Rudraram, since 6.9.1995. His evidence is that,

PW.1 was working in Company in Unit-IV Copper Plant in production department since March, 2004 as casual labour. The entire record is computerised and his evidence is based on computer record and at present, they do not have any manual records.

Further, according to the evidence of P.W.3, PW.1 worked up to 12-2-2007. As on 29-9-2007, his record was left in records and thereafter his record is removed. His gross salary was Rs.4,680/- per month up to 12-2-2007. They have not paid salary from 13-2-2007 till his name is removed from records. The Company used to enhance salary from Rs.350/- to Rs.600/- every year. Ex.A10 – salary certificate shows that his last drawn wages is Rs.4,680/-, at the time of leaving the organization. Ex.A10 further shows that PW.1 worked in their Organization from 01-3-2004 to 29-09-2007. So, the salary drawn is of Rs.4,680/-, last salary drawn till 29.09.2007 when his name was removed from the rolls.

Further, Ex.C1 is the salary slip for the month of January, 2007. According to which, the gross salary of PW.1 was Rs.6,591/- and after compulsory deductions, it was Rs.5,993/-. Ex.C2 is the attendance particulars of PW.1 for the month of February, 2007. According to which, he attended to duty from 04-2-2007 to 12-2-2007. During the cross-examination, PW.3 stated that, there is no record showing that they have removed or he himself resigned.

24. A combined reading of the evidence of P.W.1 and the evidence of P.W.3 goes to suggest that P.W.1 was working in Unit-4 of Copper Plant in production department as casual labour since March, 2004. The service particulars were computerized and there was no manual records. As per Ex.A10 the last drawn wages was Rs.4,680/- and according to Ex.C1 for the month of January, 2007 the gross salary was Rs.6,591/- and it is also evidence from the evidence of P.W.3 corroborated with P.W.1 that since the date of accident i.e., from 12.2.2007 P.W.1 was not working in the said Unit-4, Copper Plant. It is not the evidence of P.W.2 – Doctor that P.W.1 is incapable of earning. Only there is amputation of 5th toe and loss of vascularity to other toes. The same is further corroborated and supported by photographs affixed to Ex.A9 - disability certificate and Ex.A11 photograph.

25. The claimant/appellant in support of his contention that there is functional disability, loss of future income relied on a decision in *Rajan Vs. Soly Sebastian* ((2015) 10 SCC 506) wherein the Apex Court held that the High Court should have assessed the notional income of the appellant after taking into consideration the relevant minimum wages notification dated 11.1.2000 published in Kerala Gazette Extraordinary issued by Labour and Rehabilitation (E) Department, Government of Kerala and the undisputed fact that appellant was a professional driver and has suffered 100% permanent disability with regard to his earning capacity. The notional income of

the appellant must be taken at Rs.3,500/- per month. After considering 50% enhancement for future prospects and also allowed loss of earnings of the appellant at the rate of Rs.3,500/- per 21 months, since the appellant was unable to work for 21 months from the date of the accident till filing of the claim petition. In the said case the Tribunal observed that the appellant had suffered severe head injury with fracture of the right orbital wall, fracture transverse process C1 and Ts, fracture of the ribs on the right side, loss of two teeth, partial loss of vision with diplopia, torticollis neck, loss of hearing and incontinence of urine and motion, right-sided hemiplegia and multiple bodily injuries. Since he is driver the Apex Court held it was 100% disability, since he is not fit for the driving profession.

26. In *Munna Lal Jain Vs. Vipin Kumar Sharma* ((2015) 6 SCC 347) the apex Court considering the earlier decision in *Santhoshi Devi Vs. National Insurance Co. Ltd.* ((2012) 6 SCC 421) held that future prospects to a person who is self-employed or employed on fixed wages would get 30% raise in income over a period of time and the relevant multiplier for the age group 26 to 30 years is '17' and the actual salary should be learnt as actual salary less tax in addition to 50% of the actual salary to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years.

27. In *Santhoshi Devi Vs. National Insurance Co. Ltd.* ((2012) 6 SCC 421) the Apex court held that that although the

wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. The court can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In **Sarla Verma's case** in paragraph 24 the Apex court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident, then the same formula deserves to be applied for calculating the amount of compensation.

28. In **Savita Vs. Bindar Singh** ((2014) 4 SCC 505) the Apex Court expressed the same view that after considering the decision of the Apex Court in **Santhoshi Devi's supra** as well as **Rajesh Vs. Rajbir Singh** ((2013) 9 SCC 54) the Apex Court was of the opinion that it is the duty of the court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the

claimant. It is the duty of the Court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation.

29. In *Syed Sadiq etc Vs. Divisional Manager, United India Ins. Co.* (AIR 2014 SC 1052) the Apex Court held that the rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

30. Having considered that the appellant/claimant was self-employed and was 24 years of age held that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in the *Santosh Devi case* (supra) and with regard to

multiplier, relied on *Sarla Verma case* which was upheld in *Santhoshi Devi case*. In the said case the claimant was a vegetable vendor and there the Apex court applied the decision in *Santhoshi Devi Case* and also para 24 of the *Sarla Verma case* that where the deceased was self employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances.

31. In the earlier decision in *Reshma Kumari Vs. Madan Mohan* ((2013) 9 SCC 65) the Apex Court held that where the age of the deceased is 15 years or above, multiplier as indicated in column No.(4) of the table of *Sarla Verma case* (supra) read with para 42 of the judgment must be followed.

32. In the case of *Rajesh Vs. Rajbir Singh* ((2013) 9 SCC 54) the Apex Court observed that in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for the purpose of computation of compensation; (i) by 50% where his age was below 40 years, (ii) by 30% where he belonged to age group of 40 to 50 years, and (iii) by 15% where he was between age group of 50 to 60 years.

33. From the above decisions, it is clear that the Tribunal while awarding compensation shall take into consideration the cost of living, the disability suffered and also award future prospects by

enhancing of actual income of the deceased for the purpose of computation of compensation by 50% where the deceased was below 40 years and award just compensation. The table-4 of *Sarla Verma case* (supra) shall be followed while applying the multiplier and also shall follow the principle laid down in *Sarla Verma case* (supra) in the case of salaried persons which also applicable to the self-employed and persons on fixed wages.

34. In the case on hand the claimant/appellant is working as a casual labour in the Copper Plant, Unit-IV, Patancheru and his disability as per Ex.A9 is 50% and there was crush injury to the right foot and as per Ex.A5 there was amputation of 5th toe and loss of vascularity to other toes, which can be clear from the photo in Ex.A11 coupled with a photo affixed on disability certificate under Ex.A9. Either P.W.1 or the Doctor P.W.2 does not speak that P.W.1 cannot do any other work and earn. They only speak disability is 50% as per Ex.A7. The Doctor does not speak any loss of earnings in future, however, the Tribunal rightly assessed the functional disability at 25% strictly in accordance with the workmen compensation act since there is only loss of 5th right toe and loss of vascularity to other toes and he can attend his regular duties as well. There is no convincing evidence for loss of future earnings.

35. As per Ex.A3, P.W.1 admitted in ARK Hospital on 12.2.2007 and he was referred to Gandhi Hospital and discharged on the same day. Immediately on 13.2.2007, P.W.1 was admitted in

NIMS, Panjagutta, Hyderabad and discharged on 8.3.2007 as per Ex.A5. Accordingly, he was in NIMS hospital from 13.2.2007 to 8.3.2007 i.e., 23 days. According to P.W.2 and Ex.A6, P.W.1 was admitted in NIMS on 19.4.2007 and discharged on 23.4.2007 and thus, he was in hospital for 4 days. In all, P.W.1 was hospitalised for 27 days. From 12.2.2007, according to the evidence of P.W.3, he was not paid any salary. There is no convincing evidence as to the date on which P.W.1 was stopped to work under P.W.3 except the dates he was hospitalized initially from 13.2.2007 to 8.3.2007 and subsequently from 19.4.2007 to 23.4.2007. P.W.3 clearly stated that he does not know whether P.W.1 voluntarily retired or he was removed from the service. There is no clarity with regard to his removal from the service. Hence, in such circumstances, I can safely conclude that the finding of the Tribunal that the disability is 25% is quite reasonable and acceptable.

36. As already discussed above, the income of the deceased is Rs.4,680/- per month. Considering the age of the claimant/P.W.1 as 26 years, as per Sarla Verma's case (supra) the relevant multiplier is '17'. Absolutely there is no material on record showing that whether he paid any tax or not, so the entire gross salary of Rs.4,680/- can be taken as the monthly income of the deceased. After adding 50% of salary as future prospects, it would come to Rs.7,020/- (4680 + 2340). Since the petitioner is a bachelor and unmarried 50% has to be deducted towards his personal expenses, which works out to

Rs.3,510/- per month and Rs.42,120/- per annum. After applying the multiplier 17, it works out to **Rs.7,16,040/-**.

37. Besides that the petitioner is entitled for a sum of **Rs.10,000/-** towards pain and sufferance as awarded by the Tribunal. He is entitled for **Rs.10,000/-** towards loss of amenities and **Rs.21,555/-** towards medical expenses under Ex.A7.

38. The Tribunal awarded only Rs.3,000/- towards extra-nourishment, which is very meagre and requires modification and accordingly it is enhanced to **Rs.10,000/-**.

39. In the evidence of P.W.1 he admitted that his brother attended him in the hospital and he paid Rs.2,000/- per month per one year i.e., Rs.24,000/-, but no piece of evidence either oral or documentary was produced in support of the same. Considering the said fact because attendant is his own brother and he was in hospital for 27 days, the Tribunal has rightly awarded **Rs.3,000/-** towards attendant charges, which requires no interference.

40. The claimant also did not produce any evidence in proof of transport expenses. The claimant was admitted in ARK Hospital initially on 12.2.2007 and later shifted to NIMS Hospital on 13.2.2007 and discharged on 8.3.2007 and again he was admitted in the hospital on 19.4.2007 and discharged on 23.4.2007. Accordingly, he was went to the Hospital only five times and the Tribunal granted Rs.3,000/-, which is very meagre and this requires modification, accordingly it is

modified and enhanced to **Rs.10,000/-** for the five trips @ Rs.2,000/- per trip towards transportation to the hospital.

41. Absolutely there is no oral or documentary evidence with regard to the damage to the vehicle. The petitioner neither deposed the extent of damage to the motorcycle or filed any estimation for repairs or the cost of repairs actually incurred by the petitioner. In the absence of any such material evidence, the Tribunal has rightly not granted any amount under damages to the motorcycle, which do not warrant any interference in the appeal.

42. In the facts and circumstances discussed above, I am of the considered view that the order of the Tribunal to the extent modified suffers from legal infirmities and warranting interference in the appeal.

43. In the result, the appeal is partly allowed while setting aside and modifying the award and decree dated 22.3.2010 in O.P.No.425 of 2007 on the file of the Principal District Judge, Rangareddy District, L.B.Nagar and passed the modified award for Rs.7,80,595/- against the respondents 1 and 2 jointly and severally with proportionate costs and interest at 7.5 % per annum from the date of petition i.e., 23.3.2007 till the date of deposit or realization, which shall be deposited, after adjusting the amount, if any, already deposited or paid, within a period of 30 days from the date of receipt of a copy of the appeal judgment. On such deposit, the appellant is permitted to withdraw the same.

44. Advocate fee is fixed at Rs.2,500/-.

45. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

June, 2018.

skmr / gnr

