THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 675 of 2009

JUDGMENT:

This appeal is arising out of the order dated 20.08.2008 in O.P.No.2773 of 2005 on the file of VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad (for short, 'the Tribunal').

2. The appellants filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/- on account of the death of D. Bhaskar Goud in a motor vehicle accident occurred on 27.10.2006. On the fateful day, while the deceased was proceeding on his motorcycle bearing No.AP 28N 1082 from Miyapur towards Kukatpally and when he reached near Kukatpally Housing Board colony, opposite to Remedy Hospital signal, he stopped his bike due to non-clearance of traffic signal. At that time, one DCM Van bearing No.AP 28T 3662 belonging to the 1st respondent, driven in a rash and negligent manner, hit vehicle the deceased from back side, due to which the deceased got crushed between the DCM van and a lorry bearing No.AP 9V 7291 which was taking turn in front of the deceased. By the date of accident, the deceased was 28 years old and running a Bar and Restaurant under the name and style of M/s Vihar Restaurant and Bar, at Shobhana Colony, Balanagar, and earning Rs.15,000/- per month.

The 2nd respondent-insurance company filed counter and additional counter denying the material allegations in the claim petition, contending that the driver of the crime vehicle has no valid driving licence. He has licence to drive only LMV, MCWG and Motor Cab, and he has no licence to drive a transport vehicle. Thereby he committed violation of terms and conditions of insurance policy, as contemplated under Section 149 of the Motor Vehicles Act.

The Tribunal allowed the claim petition granting compensation of Rs.15,000/- with interest at 6% per annum from the date of petition till realization. The Tribunal directed the 2nd respondent to pay at the first instance and recover the same from the 1st respondent.

Aggrieved by the impugned judgment, this appeal has been preferred by the claimants.

3. Heard the learned counsel for the appellants, and the learned counsel for the respondent.

4. The counsel for the appellants submitted that the Tribunal has failed to appreciate the income of the deceased. The deceased was earning Rs.15,000/- per month on a Bar and Restaurant. The Tribunal, without appreciating the evidence, has taken notional income of deceased approximately and has awarded Rs.50,000/-.

5. Learned counsel for the respondent contended that the compensation awarded by the Tribunal is adequate, and it is just and reasonable compensation. The compensation does not require enhancement.

6. At the outset, the dispute in the appeal is about the fixation of income of deceased. The deceased was aged about 28 years and running a Bar and Restaurant under the name and style of M/s Vihar Restaurant and Bar, at Shobhana Colony, Balanagar, prior to the date of accident.

7. As per the contention of the appellants, the deceased was earning Rs.15,000/- per month. They have filed Ex.A6 licence to prove his earning. Ex.A6 was issued by the Prohibition and Excise Superintendent, Medak, Ranga Reddy District. The petitioner have also filed Ex.A7, Municipal Licence for M/s Vihar Restaurant and Bar issued by Kukatpally Municipality, and Ex.A8 licence issued by A.P. Beverages Corporation Limited for the months of August, September and October, to prove the income of deceased during relevant period.

8. The Tribunal has disbelieved the testimony of PW.1 who has produced documents Exs.A6 to A8 as the income tax returns of the deceased were not filed to prove his income. In fact, the petitioners have not produced any income tax returns of the deceased, thought it is stated that the deceased was earning Rs.15,000/- per month. The documents filed by the petitioners could not be proved by examining the authors of the documents. In fact, the documents have been issued by the concerned Government officials, and they can be considered as public documents, though none o the officials were examined to prove those documents. However, the burden is on the petitioner to prove the contents of the documents. The Tribunal, taking into consideration the fact that the deceased was doing business, awarded notional compensation of Rs.20,000/- towards loss of estate, Rs.20,000/- towards loss of love and affection, and a sum of Rs.10,000/- towards funeral and other expenses. The Tribunal granted total compensation of Rs.50,000/-.

9. The Tribunal has not taken into consideration notional income basing on the documents available on record which prove occupation of deceased. Therefore, there is evidence on record to show that the deceased was running a Bar and Restaurant. Therefore, at least he

should have been considered as earning some income. The Tribunal has not granted any compensation taking at least the notional income of deceased, on the wrong premise that the business of deceased being continued by 2nd petitioner, and the family did not suffer loss of earnings. In fact, the same business was being continued by his father who is 2nd petitioner. The fact that the 2nd petitioner was continuing the business does not deprive the petitioners of the dependency, as they have lost the services of deceased and his love and affection.

10. In **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company Limited**[1]**,** the notional income of a vegetable vendor was taken as Rs.6,500/- per month, considering him as a skilled labourer.

11. In the facts and circumstances of the present case, the notional income of the deceased can be taken into consideration as Rs.6,500/- per month.

12. The deceased was 28 years old by the date of accident. Therefore, in the light of the judgment of the Hon' ble Apex Court in **National Insurance Company Limited v. Pranay Sethi**[2], future prospects at 40% on the notional income have to be taken into consideration. The notional income of the deceased would be Rs.6500 + 40% of Rs.6500, which comes to Rs.9,100/-. The annual income of the deceased would come to Rs.9100 x 12 = Rs.1,09,200/-. As the deceased was unmarried by the date of accident, deducting 1/2 of the income towards personal expenses, his contribution to the family would come to Rs.54,600/- per annum. The multiplier applicable for 28 years for calculating loss of dependency, as

[1] (2014) 2 SCC 735
[2] (2017) ACJ 2700

per **Sarla Verma** is '17'. Therefore, the loss of dependency would come to Rs.54600 x 17 = Rs.9,28,200/-. The claimants are further entitled to conventional charges of Rs.70,000/- as per the judgment in **Pranay Sethi.**

13. Therefore, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S.No	**Head**	**Compensation awarded by Tribunal**	**Compensation enhanced**
1.	Loss of dependency	Nil	Rs.9,28,200
2.	Conventional charges	Rs.50,000	Rs.70,000
	Total	**Rs.50,000**	**Rs.9,98,200**

14. **IN THE RESULT**, the appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.50,000/- to Rs.9,98,200/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The respondent-Insurance company is directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are permitted to withdraw the compensation amount. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

23rd November, 2018

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