THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.2788 of 2004

JUDGMENT:

Having not been satisfied with the quantum of compensation awarded, the claimants preferred this appeal, under Section 173 of the Motor Vehicles Act, 1988, ('the Act' for short), assailing the order/award, dated 14.06.2004, in MVOP.No.387 of 2001 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kakinanda.

2. I have heard the submissions of the learned counsel for the appellants/claimants ('the claimants' for brevity) and of the learned counsel for the 3rd respondent/insurance company ('insurance company' for brevity). The 1st respondent is the driver and the 2nd respondent is the owner-cum-insured of the vehicle involved in the subject accident. This appeal is dismissed for default against the 1st respondent. The 2nd respondent though served with notice did not enter appearance.

3. At the outset, it is to be noted that the wife, children and mother of the deceased, Nookaraju, [hereinafter referred to as 'the deceased'] filed the claim petition before the Tribunal claiming a compensation of Rs.2,80,000/- on account of the untimely death of the said deceased due to his involvement in the subject motor vehicle accident. They *inter alia* pleaded that as on the date of the accident, the deceased was aged 44 years and used to earn a net income of Rs.60,000/- per annum from cultivation and vegetable business and that the claimants totally depended upon the income of the deceased and that due to his untimely death on account of his involvement in the accident, they lost their livelihood and suffered mental agony and that the 1st claimant lost her conjugal happiness and that the claimants 2 & 3, who are the minor children of the deceased, lost parental love and affection and that the 4th claimant lost her only son and that after the death of the deceased, the claimants were forced to borrow monies on interests at exorbitant rates to meet the funeral and other expenses and that they are struggling a lot for their existence and that the future of the minor children has become uncertain and bloomy. Apart from other contentions, the relevant contention of the insurance company is that the compensation claimed is high, excessive and unjust. Further, the insurance company put the claimants to strict proof of the age, occupation and income of the deceased and their entitlement to the compensation claimed. On merits, the Tribunal partly allowed the claim petition with proportionate costs and awarded a compensation of Rs.1,86,000/- with interest at 9% per annum simple from the date of petition till the date of deposit and fastened joint and several liability on the respondents 1 to 3 to pay the afore-stated compensation. As already noted, not having been satisfied with the quantum of compensation awarded, the claimants filed this appeal.

4. At the hearing, learned counsel for the claimants contended as follows: - 'The Tribunal grossly erred in awarding a meagre compensation by erroneously fixing the income of the deceased at Rs.1,500/- per month on an erroneous assumption that it is not uncommon for the claimants like the present claimants to exaggerate the income of the deceased and further incorrectly held that the oral testimony as regards occupation and income of the deceased cannot be accepted. The Tribunal ought to have seen that the Tribunals and Courts are fixing the income of even a non earning member or a house wife at

Rs.5,000/- and more per month by the year 2001, in which the pleaded accident had occurred. Therefore, the Tribunal ought to have accepted the income of the deceased at Rs.60,000/- per annum. The Tribunal wrongly deducted 1/3rd out of the income of the deceased towards his personal and living expenses though the number of dependants is four. The Tribunal did not follow the precedential guidance in the decision in **Sarala Verma v. Delhi Transport Corporation and another**[1] and other applicable decisions and awarded a meagre sum of Rs.15,000/- under the head 'loss of consortium' and Rs.10,000/- under the head 'loss of estate' and Rs.5,000/- under the head 'transportation and funeral expenses' and failed to award any compensation to the minor children under the head 'loss of love & affection and loss of career guidance'. In the facts and circumstances of the case, the claimants are entitled to more amount of compensation than claimed. The Tribunal ought to have seen that the Tribunal is empowered to grant more compensation than claimed in view of the decisions of the Supreme Court and that it is the duty of the Tribunal to award just compensation which is reasonable on the basis of the facts and evidence produced on record.'

5. Learned counsel for the insurance company while supporting the impugned award contended *inter alia* that the Tribunal rightly determined the income of the deceased at Rs.1,500/- per month as no reliable evidence was adduced to establish the occupation and income of the deceased and that the compensation awarded is just, reasonable and fair and the same needs no modification and, therefore, the appeal is devoid of merit and is liable to be dismissed.

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[1] 2009 ACJ 1298

6. I have given earnest consideration to the facts and submissions.

7. The points that arise for determination are:

Whether the compensation awarded by the Tribunal is not reasonable, just and fair in the facts and circumstances urged by the claimants? And, if so, what shall be the reasonable, just and fair compensation to be awarded to the claimants? To what relief?

8. Dealing first with the compensation to be awarded under the head 'loss of dependency', it is necessary to deal with necessary pleadings, evidence and the legal position obtaining. Though the claimants claimed that the deceased was of 44 years of age as on the date of accident, the first claimant stated in her cross examination that she mentioned the age of her husband as 55 years in the claim petition. She further stated that her husband was of 46 years of age at the time of accident. The Tribunal observed in its award that the age of the deceased was mentioned as 55 years at one place in the claim petition. However, a perusal of the claim petition reveals that in the relevant column, the age of the deceased was originally mentioned as 55 years, but, was corrected as 44 years. Be that as it may. In the crime records, viz., copies of inquest report-exhibit A3 and post mortem report of the deceased-exhibit A4, the age of the deceased was consistently mentioned as 55 years. However, exhibit A5 certificate issued by the Headmaster of M.P elementary School, Unduru, reflects that the deceased studied in the said institution during the years 1963-1970 and that his admission number is 206 and his date of birth as per school records is 15.06.1956. The headmaster of the said school, who issued the said exhibit A5-certificate, was examined as PW3. In his evidence, he reiterated the contents of the said certificate but stated in his cross examination that he did not bring the original records and that as per the school records the name of the father of the deceased is Surya Rao. The copy of the inquest report discloses that the name of the father of the deceased is Suryanarayana. As per the said date of birth in the school record, the age of the deceased works out to 46 years as on the date of the accident. The Tribunal having taken into account the contents of exhibit A5 certificate and the testimony of PW3 opined that the deceased was aged about 46 years at the time of his death. Having regard to the evidence discussed supra this Court also accepts the age of the deceased as 46 years as on the date of the accident. The case of the claimants was that the deceased used to earn Rs.60,000/- per annum on cultivation and vegetable business. Not accepting the said version, the Tribunal determined the monthly income of the deceased at Rs.1,500/-. As rightly pointed out by the learned counsel for the claimants, the Courts and Tribunals are fixing notional income of even a non earning member or a house wife at Rs.3,000/- to Rs.5,000/- or more per month having regard to the year of accident and other circumstances. Considering the fact that the accident in the instant case occurred in the year 2001 and that the occupation of the deceased was vegetable business and cultivation, the net income of the deceased is determined as Rs.3,000/- per month. The net annual income thus works out to Rs.36,000/- [Rs.3,000/- x 12]. Since the number of dependants is four, 1/4th has to be deducted towards personal and living expenses of the deceased. If so deducted, the balance annual income works out to Rs.27,000/- [Rs.36,000/- - Rs.9,000/-]. To this, an addition of 10% is to be made towards future profits since the deceased was self employed and as the age of the deceased was between 40 and 50 years as on the date of his death. If so added, the annual income of the deceased works out to Rs.29,700/-. Accordingly, the annual loss of dependency is determined at Rs.29,700/-. The multiplier should be chosen with reference to the age of the deceased and as per column number 4 of the table given in the decision in **Sarla Verma (supra)**. Keeping in view the facts and circumstances of this case and having regard to the determined age of the deceased and the probable period of his active career, the appropriate multiplier is fixed at `13' (thirteen). If the above multiplicand is multiplied by the said multiplier, the compensation under the head 'loss of dependency' works out to Rs.3,86,100/- [Rupees Three Lakhs Eighty Six Thousand and One Hundred only]. The said sum is accordingly awarded.

9. Coming to the other amounts of compensation awarded by the Tribunal under the other heads, it is to be noted that the Tribunal had awarded Rs.15,000/- towards consortium, Rs.5,000/- towards transportation & funeral expenses and Rs.10,000/- under the head 'loss of estate'; but, did not specifically award any compensation to the minor children under the heads 'loss of love & affection' and 'loss of career guidance'. Following the guidance decision in **National Insurance Co. Ltd., v. Pranay Sethi and others**[2], Rs.15,000/-, Rs.40,000/- and Rs.15,000/- are respectively awarded under the heads 'loss of estate', 'loss of consortium' and 'funeral expenses'. In the decision in **Anjani Singh and Ors. V. Salauddin & Ors**[3]**,** the Hon'ble Supreme Court by following the ratio in a three Judge Bench decision in **Rajesh and Ors. V. Rajbir Singh and Ors**[4] had awarded in that case Rs.1,00,000/- towards loss of love and affection for the children. In the case on hand, the 2nd and 3rd claimants are aged 14 years and 12 years. Hence, a sum

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[2] 2017 (6) ALD 170
[3] 2014 ACJ 1565 = 2014 (6) SCALE 55
[4] (2013) 9 SCC 54

of Rs.75,000/- is awarded under the head 'loss of love & affection and loss of career guidance' to the children.

10. Accordingly, the claimants are held entitled to the following compensation amounts:

Sl. No.	Head of compensation	Amount (in Rs.)
(1)	Loss of dependency	3,86,100-00
(2)	Loss of estate	15,000-00
(3)	Loss of consortium	40,000-00
(2)	Funeral expenses	15,000-00
(3)	Loss of love & affection and career guidance	75,000-00
	Total	5,31,100-00

(Rupees Five Lakhs Thirty One Thousands and One Hundred only)

The claimants had claimed a compensation of Rs.2,80,000/-. The compensation as determined and awarded worked out to Rs.5,31,100/- which is more than the amount claimed by the claimants. In **Nagappa** v. **Gurudayal Singh and others**[5]**,** the Supreme Court had held that under the M V Act there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount and that the function of the Tribunal/Court is to award just compensation, which is reasonable on the basis of the evidence produced on record. Thus, as per the determination supra, the just, reasonable and fair compensation to which the claimants are entitled to is Rs.5,31,100/-. The enhanced compensation is Rs.3,45,100/- [Rs.5,31,100/- - Rs.1,86,000/-]. In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. Since the Insurance Company did not prefer any appeal assailing its liability to pay the compensation and the only question involved in this appeal is in regard to the quantum of compensation, there are no other issues to be adverted to and decided in this appeal. Therefore, it

[5] AIR 2003 SC 674

follows that the respondents 1 to 3 are jointly and severally liable to pay the additional compensation amount awarded to the claimants. The points are accordingly answered.

11. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award simple interest at the rate of 7.5% per annum from the date of the claim petition as per the ratio in the decision in **Mohinder Kaur and others v Hira Nand Sindhi**[6] . On the compensation already awarded, the trial Court had granted interest at 9% per annum simple.

12. In the result, the appeal is allowed with costs awarding a total compensation of Rs.5,31,100/- (Rupees Five Lakhs Thirty One Thousands and One Hundred only). The enhanced compensation amount of Rs.3,45,100/- is apportioned amongst the claimants as under: 'Rs.1,00,000/- [Rupees One Lakh only] each to the claimants 1, 2 & 3; and Rs.45,100/- [Rupees Forty Five Thousands and One Hundred only] to the 4th claimant.' The 2nd respondent/insurance company is directed to deposit before the Tribunal, within two months from the date of the receipt of a copy of this judgment, the enhanced portion of compensation i.e., Rs.3,45,100/- (Rupees Three Lakhs Forty Five Thousands and One Hundred only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. The claimants shall pay as per the procedure, the deficit court fee on the difference compensation i.e., the amount awarded in excess of the amount claimed. On such deposit of the amount before the

[6] (2015) 4 SCC 434

Tribunal, the 4th claimant is permitted to withdraw her share of compensation with proportionate interest; the 1st claimant is permitted to withdraw Rs.50,000/- from her share of compensation and her entire accrued proportionate interest besides costs awarded; the claimants 2 & 3 on attaining majority and on getting themselves declared as majors as per procedure, are permitted to withdraw their respective shares of compensation with proportionate interests. The balance compensation amount of the 1st claimant shall be invested in a fixed deposit in her name in a nationalised bank as per practice and procedure with auto renewal facility till it is released in her favour as per procedure.

Miscellaneous applications, if any, pending shall stand closed.

M. SEETHARAMA MURTI, J

21.02.2018
Vjl