HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No. 955 OF 2008

JUDGMENT:

1. The appellants/claimants, aggrieved by the Award and Decree dated 5.11.2007 passed in MVOP.No.1035 of 2006 preferred this appeal, whereby the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Guntur awarded compensation of Rs.9,78,130/- with interest at 7.5% per annum from the date of petition till the date of deposit and proportionate costs while directing the respondents to pay the said amount jointly and severally.

2. The contentions of the appellants/claimants are that the Tribunal erred in taking the age of the deceased at 45 years and it ought to have taken the age of the deceased at 43 years and applied the multiplier 15. The Tribunal erred in taking the net salary into consideration and it ought to have seen that some amounts in deductions have to be paid by the legal representatives of the deceased and those are uncleared debts of the deceased. The Tribunal erred in not awarding compensation towards future prospects of the deceased who was the salaried employee.

3. (a) The case of the appellants/claimants in brief is as follows: the first appellant/first claimant is the wife, appellants 2 & 3/claimants 2 & 3 are the sons and appellants 4 & 5/claimants 4 & 5 are the parents of the deceased.

(b) While so, on 14.08.2016 at about 11 PM when the deceased and others were coming from Mangalagiri to Guntur in auto bearing No. AP 7TT 5571 and when the said auto reached Sankar Eye Hospital, Pedakakani, on NH.5, the driver drove the auto in rash and negligent manner and applied sudden breaks as one vehicle which was proceeding ahead of it in the same direction was slowed down, as a result of which, the said auto turned turtle. In the said accident, the deceased-Raghava Rao sustained severe injuries, Immediately after the accident, when all the injured including the deceased were shifting to Government General Hospital, Guntur for treatment, the deceased succumbed to injuries on the way to hospital.

(c) Prior to the accident, the deceased was hale and healthy and drawing salary of Rs.15,350/- per month working as Senior Telephone Supervisor, in BSNL, Guntur. Due to the sudden death of the deceased, the appellants/claimants lost their bread winner. The third appellant/claimant is the mentally unsound son and hence he is completely depending on his father-deceased.

(d) The first respondent is the insured and second respondent is the insurer of the auto bearing No.AP 7TT 5571 and hence they are jointly and severally liable to pay the compensation.

4. Before the Tribunal, the first respondent remained ex parte. The second respondent filed counter contending that the

appellants/claimants have to prove that the driver of the auto bearing No. AP 7TT 5571 was possessing valid and effective driving licence, said auto has valid permit and, also age and income of the deceased.

5. Based on the rival contentions, the Tribunal framed the following issues for trail.

> 1. Whether the deceased died in the accident due to rash and negligent driving of the driver of the Auto bearing Regd. No.AP 7TT 5571 ?
>
> 2. What is the just amount of compensation that the petitioners can be granted ?
>
> 3. To what relief ?

6. To prove their respective claims, on behalf of the appellants/claimants, P.Ws.1 to 3 were examined and Exs. A.1 to A.3 and Exs.X.1 and X.2 were got marked. On behalf of the second respondent, RW.1 was examined and Ex.B.1 was got marked.

7. Now the point that arises for determination is, *whether the Tribunal erred in considering the age of the deceased as 45 years and net salary as his income and applying the multiplier 10.54, and, whether the Award suffers from any legal infirmities*.

8. (a) Learned Counsel for the appellants submits that the deceased was aged 43 years as on the date of accident and the Tribunal might have considered the gross salary of the

deceased for assessing the compensation payable to the claimants, but it erroneously took the net salary and that it should have applied the multiplier 15.

(b) Per contra, the respondents contended that the Tribunal rightly took the age of the deceased as 45 years and applied the multiplier rightly and awarded just compensation, which does not suffer from any legal infirmities warranting interference by this Court.

9. Since the claimants are appellants, they are not disputing the finding of the Tribunal with regard to rash and negligence. Hence it does not warrant interference. However, for proper appreciation of the finding in regard thereto, it is necessary to discuss the evidence on record with regard to rash and negligence.

10. The first appellant/first claimant was examined as P.W.1. In her chief affidavit, she reiterated the contents made in the claim petition. During the cross examination, she admitted that she was not the eye witness to the accident. In the claim petition as well as in the Ex.A.1 FIR and Ex.A.5 charge sheet, Ex.A.2-Inquest report, P.W.2 is shown as eye witness to the accident and he is also the complainant. Therefore the evidence of P.W.2 is material in deciding the rash and negligence. The consistent evidence of P.W.2 is that on 14.08.2006 at about 11. PM, he along with other passengers travelling in the auto bearing No. AP 7TT 5571 and when it reached Sankara Eye Hospital, pedakakani on

NH.5, in the meanwhile, the said auto was driven in rash and negligent manner without following the traffic norms and applied sudden breaks, at that time one vehicle which was proceeding ahead of it was slowed down, due to which, the auto turned turtle. In the accident, the deceased Raghavarao and others sustained injuries and while the injured were shifting hospital, the deceased Raghavarao succumbed to injuries on the way to hospital. Ex.A.1 is the FIR presented by P.W.2 on 7.00 am of 15.8.2006 with regard to the accident occurred at 11.00 PM of 14.08.2006. In the said FIR, P.W.2 clearly asserted that the auto bearing No. AP 7TT 5571 was involved in the accident and further asserted that the accident occurred due to rash and negligent driving of its driver. The Investigating Officer after thorough investigation filed Ex.A.5 charge sheet against the driver of the said auto finding that on 14.08.2006 at about 11.00 PM the accused/driver S.Srinivasa Rao drove the auto bearing No.AP 7TT 5571 in rash and negligent manner. Along with P.W.2, the deceased Raghava Rao and other woman passenger with her 10 years old boy travelled in the said auto and when the said auto reached Sankara Eye Hospital and the accused driver noticed the tractor going ahead is coming to hault on the road margin and hence, unable to control the speed, applied sudden breaks, then the said auto turned turtle due to which, the deceased suffered grievous injuries.

11. The Motor Vehicle Inspector inspected the vehicle and noted that Sri S.Srinivasa Rao was the owner cum driver of the auto bearing No. AP 7TT 5571 and it has valid permit upto

16.3.2011 and the insurance policy given in respect of the said auto was valid upto 13.5.2007. He further noticed that K.Raghava Rao was the deceased and opined that there is no mechanical defect in the said auto and the accident was not due to any mechanical defect. Therefore the consistent evidence of P.W.2 supported by Exs. A.1, A.2, A.4 and A.5 well established that the accident occurred due to rash and negligent driving of the driver of the auto bearing No.A.P 7TT 5571. At the time of accident, the driver drove the said auto at high speed, in rash and negligent manner and at that time, having noticed that the tractor proceeding ahead of it was slowed down at the margin of the road, he applied sudden breaks, as a result of which the said auto turned turtle and caused the death of K.Raghvararao and grievous injures to P.W.2 and other. Hence the finding of the Tribunal in regard thereto is legal, valid and does not suffer from any legal infirmities.

12. The evidence of P.W.1 is that her husband succumbed to injuries while travelling in the auto bearing AP 7TT 5571. Her Husband was hale and healthy and aged about 43 years, was working as Senior Telephone Supervisor in BSNL, Guntur and drawing salary of Rs.15,350/-. To substantiate the income, the claimant examined Telecom Assistant in the office of the G.M.T., Guntur. His evidence is that K.Ragghavara Rao died in the accident. Ex.A.3 is the Post Mortem Examination Report and the doctor who conducted PME opined that the death was due to the multiple injuries and the death was 6-12 hours prior to

the PM examination on 15.8.2006. The evidence of P.Ws. 1 and 2 is that the accident occurred at 11.00 PM on 14.8.2006. Therefore there is direct nexus to the accident and death of the deceased at 11.00 AM. The evidence of P.W.3 is that the deceased was working as Telecom Supervisor in the G.M.Office, Guntur. Ex.A.6 is the salary certificate for the month of July, 2006, which was dated 5.1.2007 issued by the Account Officer. According to Ex.A.6, the deceased was drawing gross salary of Rs.15,454/- while his net salary was Rs.4185/-. The service register of the deceased was sent to the office of the Controller of Communications, Accounts, at Hyderabad for settlement of the terminal benefits. Ex.X.2 is the Service Certificate of the deceased from 19.3.2006 to 14.8.2006. Last pay service as per Ex.X.2 of the deceased was Rs.15,454/-. A perusal of Ex.A.6 goes to suggest that the gross salary of the deceased was Rs.15,454/- whereas deductions were Rs.11,269/- and the net salary was Rs.4185/-. Ex.X.1 corresponds to Ex.A.6, salary certificate for the month of July, 2006. According to Exs.A.6/X.1, the gross salary of the deceased was Rs.15.454/-.

13. The Tribunal while assessing the loss of dependency, discussed that he was drawing gross salary of Rs.15,350/-, but as per Ex.A.6/X.1, the gross salary of the deceased was Rs.15,454/- for the month of July, 2006, whereas the accident occurred on 14.8.2006, i.e. one month before Ex.A.6. In view of the same, I am of the considered view that the Tribunal came to the wrong conclusion that the gross salary of the

deceased was Rs.15,350/-, where as in Ex.A.6/X.1, the gross salary of the deceased was Rs.15,454/-.

14. Coming to the discussion of the Tribunal, the deceased was drawing gross salary of Rs.15,454/- and net deductions was Rs.4.185/- and the deceased was drawing Rs.11,269/- towards his net salary, which is completely erroneous and without applying mind. Ex.X.1 is the carbon copy of the salary particulars of the deceased-K. Ragghava Rao for the month of July, 2006 whereas Ex.A.6 is the original copy and both Exs.A.6 and X.1 are for the month of July, 2006. In the salary it was mentioned that the gross salary is Rs.15.454/- and deductions are Rs.11,269/- and net salary is Rs.4185/-.

15. The Tribunal relied on the decision of the Apex Court in ASHA AND OTHERS VS. UNITED INIDA INSURANCE COMPANY LIMITED AND ANOTHER (2004 ACJ 448) wherein it was held that net salary of the deceased after making deductions has to be taken into consideration while computing loss of dependency of the claimants.

16. A close perusal of Exs.A.6/X.1 goes to suggest that sums of Rs.105/- Rs.1000/-, Rs.1410/-, Rs.1024/-, Rs.3858/-, Rs.150/-, Rs.10/-, Rs.10/-, Rs.3140/-, Rs.542/-, Rs.10/- and Rs.10/- were being deducted towards GSLI, GPF, WF, LIC, Society, Professional Tax, Store, Club, Bank Loan, other advances, others and Union respectively. The sum of Rs.3858/- was being deducted towards Society loan, Rs.3140/- was being

deducted towards bank loan, Rs.1410/- was being deducted towards welfare fund, Rs.1000/- towards GPF, Rs.1024/- towards LIC and Rs.542/- towards other advances, are not the compulsory deductions. They have to be included while assessing the loss of dependency. No income tax deduction is shown in Exs.A.6/X.1 salary certificate. In ***SARLA VERMA*** case the Apex Court held that income tax paid should be deducted from the annual income to arrive at the `income' which will form the basis for calculating the compensation. Therefore gross salary which the deceased was drawing has to be considered while computing the loss of dependency. Those non compulsory deductions, which are to be paid by the claimants even after the death of the deceased cannot be taken into consideration while computing the loss of dependency. Therefore the monthly gross salary of the deceased, after deducting the professional tax of Rs.150/-, it would be 15,304/-.

17. The deceased was the permanent employee of the BSNL, Guntur, a Central Government organization, with inbuilt grant of annual increments, pay revision and other perks due to change in service conditions. In recent decision of the Apex Court in NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND ORS {2017 ACJ 2700}, it was held that while determining the income, where the deceased had a permanent job and was 40 to 50 years, 30% of actual salary to the income of the deceased should be made towards future prospects and that the

actual salary should be read as actual salary less tax. If that be so, the actual monthly income of the deceased would come to 19,896/- (15,304/- + 4,592/-).

17. Ex.X.2 is the attested copy of first page and last page of the service register of the deceased, wherein his date of birth is noted as 5.9.1961 and the accident occurred on 14.8.2006. Therefore as on the date of accident, he was aged 44 years 11 months 9 days. As per SARALA VARMA case, the relevant multiplier applicable for the age group of 40 to 45 years is '14'. Since the claimants are five members, 1/4th has to be deducted towards personal expenses of the deceased. If that be so, monthly contribution to the family would be Rs.14,922/- Then the loss of dependency would come to Rs.14,922/- x 12 x 14 = Rs.25,06,896/-.

18. Besides this, as per the decision of the Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND Ors*** (supra), under conventional heads, namely, loss of estate, loss of consortium and funeral expenses, the appellants/claimants are entitled to receive Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Further, it is just and reasonable to award Rs.3,000/- towards transportation since the Tribunal has not awarded any compensation under the aforesaid head. Thus, in all, the appellants/claimants are entitled to receive the total compensation of Rs.25,79,896/-.

19. At this juncture, it is necessary to have a look on the decision of the Apex Court in NINGAMMA AND Ors Vs.UNITED INDIA INSURANCE Co. Ltd (AIR2009SC3056) wherein it was held that under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. In the case on hand, the deceased was working as mason. Due to sudden and untimely death of the deceased, the appellants/claimants who are wife, two children and aged parents suffered loss of their dependency. They deprived of the income. If suddenly one of the spouses departs from the journey of life, midway, on account of unnatural and untimely death, a large vacuum is created in the life of the surviving spouse, which is difficult to fill. Loss of one of the spouse suddenly would leave the other spouse in dark, leaving the entire burden of carrying on the family mantle further, all alone. Worst is the case, when there are minor children and aged parents to be taken care of. Because of the unnatural death of one of the spouses, the surviving spouse would be deprived of all the joys and happiness of life and companionship. Having regard to the same, the appellants/claimants are entitled to receive the more compensation than they claimed in the claim petition, as is awarded herein.

19. For the foregoing discussion and in the result, the appeal is partly allowed, with proportionate costs, setting aside and modifying the Award and Decree dated 5.11.2007 passed in MVOP.No.1035 of 2006 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Guntur, and awarding the total compensation of Rs.25,79,896/- with interest at 7.5% per annum from the date of petition i.e.31.8.2006 till the date of deposit.

20. By virtue of the Insurance Policy, Ex.B.1, the respondents are liable to the pay the compensation amount awarded hereinabove jointly and severally. Accordingly, they are directed to deposit the compensation, adjusting the amount already paid/deposited, within thirty from the date of receipt of a copy of this judgment.

21. As on the date of filing the appeal, the first appellant is aged 42 years, second appellant is 22 years, third appellant is 20 years, fourth appellant is 71 years and fifth appellant is 66 years and considering the same, the total compensation amount is apportioned as below:

First appellant/First claimant	…….	Rs. 11,79,896.00
2nd appellant/2nd claimant	…..	Rs. 4,00,000.00
3rd appellant/3rd claimant	……	Rs. 4,00,000,00
4th appellant/4th claimant	……	Rs. 3,00,000,00
5th appellant/5th claimant	…..	Rs. 3,00,000,00

22. On deposit of the amount by the respondents as directed hereinabove, the appellants/claimants are permitted to withdraw their respective share amounts.

23. Advocate fee is fixed at Rs.2500/-

24. The appellants/claimants have to pay deficit court fee due before applying for the decree and award.

24. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 25TH JANUARY 2018.
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