THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4538 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 24.08.2004, in MVOP.No.570 of 2000 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur.

2. I have heard the submissions of the learned counsel for the appellants/claimants ('the claimants' for brevity) and the learned counsel for the 2nd respondent/insurance company ('insurance company' for brevity). This appeal against the 1st respondent/owner-cum-insured was dismissed for default. Even though the appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[1].

[1] 2001(1) ALD 453 (DB)

3. 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?

4. <u>POINTS:</u>

At the outset, it is to be noted that the husband and children of the deceased, B. Emilemma, [hereinafter referred to as 'the deceased'] filed the claim petition before the Tribunal claiming a compensation of Rs.1,50,000/- on account of the untimely death of the deceased due to her involvement in the subject motor vehicle accident. They *inter alia* claimed that as on the date of the accident, the deceased was aged 40 years and used to earn Rs.50/- per day by attending to coolie work and that on account of her death, they suffered loss of dependency and that they had spent Rs.5,000/- on her funeral expenses. Apart from other contentions, the relevant contention of the insurance company is that the compensation claimed is high, excessive and unjust. On merits, the Tribunal awarded a compensation of Rs.99,000/- with interest at 9 % per annum from the date of petition till the date of deposit with proportionate costs and fastened joint and several liability on the respondents 1 & 2 to pay the afore-stated compensation. As already noted, not having been satisfied with the quantum of compensation awarded, the claimants filed this appeal.

5. At the hearing, learned counsel for the claimants contended that the Tribunal having fixed the annual income of the deceased at Rs.15,000/- per annum wrongly applied multiplier '9' though the multiplier applicable is '15' as per the decision in **Sarala Verma v. Delhi Transport Corporation and**

another[2] in view of the fact that the deceased was of 40 years of age on the date of her death. He would further contend that the Tribunal did not award reasonable and fair amounts under the conventional heads, 'loss of consortium', and 'funeral expenses' and that no compensation is awarded under the head 'loss of estate' and that though the 2nd claimant is a minor daughter and the 4th claimant is 18 year old daughter of the deceased, no compensation is awarded under the head 'loss of love & affection and career guidance' and that therefore, the total compensation awarded by the Tribunal is unjust and unfair and hence, the same requires upward revision and that by any standards that may be applied, the sum of Rs.1,50,000/- claimed as compensation is just and fair and the said compensation ought to have been awarded by the Tribunal by allowing the claim petition as prayed for.

6. Learned counsel for the insurance company contended that the husband is the bread winner of the family and that the deceased is only a house wife and a non earning member and hence, the compensation awarded is just and fair and needs no modification and that, therefore, the appeal is devoid of merit and is liable to be dismissed.

7. I have given earnest consideration to the facts and submissions. Dealing first with the compensation under the head 'loss of dependency', it is necessary to deal with the relevant evidence and the legal position obtaining. Though the claimants claimed that the deceased was of 40 years of age as on the date of accident, the Tribunal, having perused the crime records, namely, exhibit A1, certified copy of FIR; exhibit A2, certified copy of inquest report; and, exhibit A3, certified copy of post mortem report of the deceased wherein the age of

[2] 2009 ACJ 1298

the deceased was consistently mentioned as 45 years, has taken the said age as the age of the deceased. The case of the claimants is that the deceased was earning Rs.50/- per day by doing coolie work. Accepting the said version, the Tribunal determined the annual income of the deceased as Rs.15,000/-. Even if the contention of the insurance company that the deceased is a house wife is to be countenanced, yet her notional annual income can be determined at Rs.15,000/- by evaluating her services as house wife in terms of money. Though the number of dependants is four (4), considering the fact that the 1st claimant/husband is also one of the bread winners of the family, a 1/3rd can be deducted from the said income of the deceased towards her personal and living expenses in view of the ratios in the decisions in **Reshma Kumari v. Madan Mohan and another**[3] and **National Insurance Co. Ltd., v. Pranay Sethi and others**[4]. After deducting 1/3rd amount, the balance works out to Rs.10,000/-. To this, an addition of 10% is to be made towards future prospects as the age of the deceased was between 40 to 50 years. If so added, the annual loss of dependency works out to Rs.11,000/-. The multiplier should be chosen with reference to the age of the deceased and as per the 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 her active career, the appropriate multiplier is fixed at `14' (fourteen). If the above multiplicand is multiplied by the said multiplier, the compensation under the head 'loss of dependency' works out to Rs.1,54,000/-[Rupees One Lakh Fifty Four Thousand only].

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[3] (2013) 9 SCC 65
[4] 2017 (6) ALD 170

8. Coming to the other amounts of compensation awarded by the Tribunal under the conventional heads, it is to be noted that the Tribunal had awarded Rs.4,000/- and Rs.5,000/- respectively under the heads 'loss of consortium' and 'funeral expenses' and no compensation is awarded under the heads 'loss of love and affection' and 'loss of estate'. Following the ratio in the decision in **Pranay Sethi** [supra], Rs.15,000/- & Rs.40,000/- are awarded under the respective conventional heads 'loss of estate' and 'loss of consortium'. The first claimant/PW1 deposed that he spent Rs.5,000/- on funeral expenses and hence, the said amount is awarded by the Tribunal under the head 'funeral expenses' and the same requires no further enhancement. In the decision in **Anjani Singh and Ors. V. Salauddin & Ors**[5]**,** the Hon'ble Supreme Court by following the ratio in a three Judge Bench decision in **Rajesh and Ors. V. Rajbir Singh and Ors**[6] had awarded in that case Rs.1,00,000/- towards loss of love and affection for the children. However, in the case on hand, the 2nd claimant, who is aged 16 years, is two years away from attaining the age of majority. Hence, Rs.25,000/- is awarded under the head 'loss of love and affection'.

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

Sl. No.	Head of compensation	Amount (in Rs.)
(1)	Loss of dependency	1,54,000=00
(2)	Loss of consortium	40,000=00
(3)	Loss of love and affection	25,000=00
(5)	Loss of estate	15,000=00
(6)	Funeral expenses	5,000=00
	Total	2,39,000=00

(Rupees Two Lakhss Thirty Nine thousands only)

[5] 2014 ACJ 1565 = 2014 (6) SCALE 55
[6] (2013) 9 SCC 54

The claimants had claimed a compensation of Rs.1,50,000/-. The compensation as determined and awarded worked out to Rs.2,39,000/- which is more than the amount claimed by the claimants. In **Nagappa** v. **Gurudayal Singh and others**[7] 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.2,39,000/-. The enhanced compensation is Rs.1,40,000/-. 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 follows that the respondents 1 & 2 are jointly and severally liable to pay the additional compensation amounts awarded to the claimants. The points are accordingly answered.

10. 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**[8] . On the compensation already awarded, the trial Court had granted interest at 9% per annum simple.

11. In the result, the appeal is allowed with costs awarding a total compensation of Rs.2,39,000/- (Rupees Two Lakhs Thirty Nine Thousand

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[7] AIR 2003 SC 674
[8] (2015) 4 SCC 434

only). The enhanced compensation is apportioned as under: 'Rs.20,000/- [Rupees Twenty Thousand] to the 1st claimant and Rs.40,000/- [Rupees Forty Thousand] each to the claimants 2 to 4. 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.1,40,000 (Rupees One Lakh Forty Thousand 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 Tribunal, the claimants are permitted to withdraw their respective proportionate shares of enhanced compensation amounts with accrued interests by following the procedure established by law. The 1st claimant is also permitted to withdraw the costs awarded.

Miscellaneous applications, if any, pending shall stand closed.

M. SEETHARAMA MURTI, J

24.01.2018
Vjl