

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT.JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No.439 OF 2008

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Challenging the order and decree dated 30.06.2007 passed in O.P.No.987 of 2002 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal – cum - I Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, the National Insurance Company Limited preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “the Act”) .

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

3. The facts in issue are as under:

(i) The first claimant is the wife of the deceased, claimant Nos.2 and 3 are children and claimant Nos.4 and 5 are the parents of the deceased. During the pendency of O.P. claimant No.5 died and the claimant Nos.1 to 4 were recognized as his legal representatives. Claimants Nos.1 to 5 filed O.P.No.987 of 2002, claiming compensation of Rs.90.00 lakhs for the death of the deceased S.Jagan Mohan Reddy, in a road accident, which occurred on 09.06.2001. It is stated that on 09.06.2001, while the deceased was proceeding along with one V.Narsimha Reddy on his motor cycle bearing No.AP9F-7038 from Vanasthalipuram to Hyderabad, when they reached near Panama Godowns, a lorry bearing No. ABP 920 driven by its driver in a rash and negligent manner and dashed the motor cycle, as a result of which the deceased fell down and sustained injuries. Immediately, he was shifted

to nearby Kamineni hospital, where the doctors declared him as brought dead. In respect of the said accident, the police registered a case in Crime No.273 of 2001 against the driver of the vehicle. It is stated that the deceased was a partner with 20% share in M/s. Swapna Constructions, which is said to be one of the reputed organization in the construction field. Apart from that, it is stated that he is also an income tax assessee with P.A.No.GIR No.1701, with annual income for the year 1999-2000 shown as Rs.8,82,850/-. It is stated that the deceased also established Mayuri A/c.Restaurant in the year 1998 at Chaitanyapuri and he was supervising the cultivation of agricultural lands situated at Aakuthotapally, which is 60 Kms. away from Hyderabad. Having regard to the above circumstances, the claimants claimed Rs.90 lakhs for the death of the deceased. Respondent No.1 therein remained *ex-parte*.

(ii) Respondent No.2 filed its counter disputing the manner in which the accident took place and also the age, income and avocation of the deceased. It is stated that the driver of lorry as well as the rider of the motor cycle are not having valid driving licence at the time of the accident, thereby violating the conditions of the policy as such the insurance company is not liable to pay the compensation.

(iii) Basing on the above pleadings, the trial Court framed the following issues:

- 1) Whether the accident occurred due to the rash and negligent driving of the vehicle bearing No.ABP 9270?
- 2) Whether the accident vehicle was insured with R2 and there is any violation of policy conditions?
- 3) Whether the petitions are entitled for any compensation, if so, from whom and to what extent?

(iv) In support of its case, the trial Court examined PWs.1 to 3 and got marked Exs.A1 to A20. No oral or documentary evidence was adduced on behalf of the respondents.

(v) After considering the oral and documentary evidence, the trial Court awarded a sum of Rs.53,60,000/- to the claimants. Challenging the same, the present appeal came to be filed by the insurance company.

4. Learned counsel for the appellant has not disputed the manner in which the accident took place. He stated that the income of the appellant should include income towards his salary and also the income earned by the firm. Sri Kota Subba Rao, learned counsel for the appellant mainly submitted that the trial Court erred in taking the total income of the firm as income of the deceased. Since the evidence on record shows that the deceased was having 20% share, the trial Court ought to have taken 20% of the earnings of the firm for the purpose of calculating loss of income. He also submits that the Court cannot exceed the amount awarded by the trial Court in view of the judgment of the Apex Court in *Ranjana Prakash and others v. Divisional Manager, New India Assurance Co. Ltd., and another*¹.

5. On the other hand, learned counsel for the claimants would submit that the findings arrived at by the Court below warrants no interference by this Court, since there is no dispute with regard to the multiplier that was adopted and the manner in which the loss of earnings were calculated. He would however submits that the trial Court erred in taking into consideration the loss of future prospects also while calculating total loss of income.

¹ (2011) ACJ 2418

6. In view of the above pleadings, we would restrict our discussion with regard to findings given by the trial Court in fixing the income of the deceased and also its failure to take into account loss of future prospects.

7. In paragraph No.12 of the judgment, the trial Court while referring to the evidence, observed that PW3 in his evidence deposed that the deceased was shareholder of 20% in M/s. Swapna Constructions, since 1997. He refers to the income tax returns A3 to A18 filed by the firm. In paragraph No.13 of the judgment, the deceased shown his salary income as Rs.2,05,746/- and paid tax of Rs.35,750/-. In the annexure of statement, income received from the firm was shown as Rs.4,21,517/- (share of the deceased in the firm) apart from showing Rs.2,05,746/- as the income received towards interest and salary from Swapna Constructions. After deducting the income tax of Rs.35,750/- the trial Court arrived at Rs.5,91,517/- towards income of the deceased. But in para No.15 of the judgment the trial Court held that “as it is a construction company and all the partners have to work for the company. Even considering the managerial loss, the loss will be not less than Rs.3,30,000/- apart from the salary income of the deceased at Rs.1,70,000/-, the trial Court determined the income of the deceased at Rs.5.00 lakhs only”.

8. Though the learned counsel for the appellant pointed out that while finding of the Court below is that the deceased was having 20% share in a firm, the Court ought to have taken 20% of the earnings of the firm and not the entire amount, but the annexure of statement clearly depicted the ‘share income of the deceased’ from the firm. Hence, it is clear that there appears to be no error in calculating income of the

deceased from the firm. Further, he would concede that the Court below erred in taking into consideration the loss for future prospects.

9. In view of the above, as per the records, the age of the deceased is 35 years on the date of accident and in view of the judgment of the Apex Court in *National Insurance Co.Ltd. Vs.Pranaysethi and others*², where there was a fixed salary and the deceased was below 40 years, 40% of the income of the deceased should be added towards future prospects. In view of the ratio laid down in *Sarla Verma v. Delhi Transport Corporation*³ the suitable multiplier to be adopted for calculating the loss of earnings would be '16'. Hence the claimants are entitled to the following amounts:



Salary income of the deceased :	Rs. 1,70,000/-
40%future prospects :	<u>Rs. 68,000/-</u>
	Rs. 2,38,000/-
Add: income from the firm :	<u>Rs. 4,21,417/-</u>
	Rs. 6,59,417/-
1/ 3 rd towards personal Expenditure	
(1/ 3x6,59,417= Rs. 2,19,806/-) :	Rs. 4,39,611/-
Multiplier adopted is 16	
(Rs.4,39,611/- x 16) :	<u>Rs. 70,33,776/-</u>

10. Apart from that, in view of the judgment of the Apex Court in *National Insurance Co.Ltd. Vs.Pranaysethi and others (2 supra)*, the claimants are entitled to Rs.70,000/- towards conventional heads namely loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs. 15,000/-).

² (2017) ACJ 2700

³ (2009) 6 SCC 121

11. Thus, in all claimants are entitled to Rs.71,03,776/- (Rs.70,33,776/- + Rs.70,000/-).

12. Though it is an appeal filed by the insurance company, but still the Court can alter the findings in favour of the claimants and award the amount not more than the amount awarded by the trial Court, in view of the judgment of the Apex Court in *Ranjana Prakash and others v. Divisional Manager, New India Assurance Co. Ltd., and another*(1 *supra*) wherein the Apex Court held as under:

“The High Court cannot obviously increase the compensation in an appeal by owner/insurer reducing the compensation, nor can it reduce the compensation in an appeal by claimants seeking enhancement of compensation.”

13. In *The National Insurance Company Limited Vs. Mohd.Zakeer and others*⁴, this Court also dealt with a situation as to whether there could be an enhancement of compensation in the appeal filed by the Insurance Company. Relying upon the Judgment of Apex Court in *Ranjana Prakash* (1 *supra*), this Court held as under:

“In *Aitipamula Kalavathi @Kalamma Vs. Southern Road Ways Limited and another*⁵, a learned single Judge of this Court relying on the decisions reported in *Oriental Insurance Company Vs. R.Swaminathan*⁶ and *Ranjana Prakash and others Vs. Divisional Manager and another*, held that compensation amount cannot be increased beyond the amount awarded by the Tribunal in the appeal filed by the insurance company. It was held that even under Order 41 Rule 33 of C.P.C., the appellate Court cannot grant larger or higher relief than claimed. It must be mentioned here that in another decision reported in

⁴ Manu/AP/0240/2014

⁵ 2014 (2) ALD 464

⁶ 2006 ACJ 1398

National Insurance Company Limited, Nizamabad Vs. Saheb @Gdivan Saheb an others⁷, another learned single Judge of this Court also expressed similar view stating that prayer for enhancement of compensation cannot be accepted when the claimant has not preferred appeal challenging the adequacy of compensation.

Coming to the present case, admittedly the claimants have not preferred any appeal and on the other hand, the insurance company has only preferred the appeal questioning the quantum of compensation. In view of the above citations, compensation cannot be enhanced to more than what was awarded by the Tribunal.”

14. In view of the judgments referred to above; and as the claimants have not preferred any appeal seeking enhancement of compensation, the appeal is dismissed confirming the quantum of compensation awarded by the tribunal. There shall be no order as to costs in the appeal. As a sequel, miscellaneous applications pending, if any, shall stand closed.

C. PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

14.06.2018

vhb

⁷ 2014(2) ALD 468