HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.57 OF 2006

JUDGMENT:

1. This appeal is preferred by the petitioners in O.P.No.55 of 2002 on the file of the Motor Accidents Claims Tribunal (District Judge) at Nizamabad (*for short, 'the Tribunal'*), dissatisfied with the award dated 22.09.2004 granting a sum of Rs.3,24,460/- towards compensation as against Rs.20,00,000/- claimed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellants herein are the petitioners before the Tribunal, while the respondent Nos.1 and 2, are the owner and insurer of the Lorry bearing No.AP 9T 1314 (*for short 'offending vehicle)*, respectively.

3. The factual background of the case is that on 16.12.2001 while the deceased Mohd.Abdul Rasheed was coming on Hero Honda Splendor motorcycle No.AP 25/G-3371 from Yellareddy to Nizamabad, when he reached the limits of Nasurullahbad, near Dargah on Banswada to Varni road at about 9.00 P.M., a lorry bearing No.AP 9T-1314 driven by its driver at high speed and in rash and negligent manner came on wrong side of the road from opposite direction, lost control over the lorry and dashed the deceased, due to which the deceased sustained multiple and grievous head injury and other fractures, and died on the spot. Prior to the accident the deceased was hale and healthy and was aged 40 years. The deceased owning a lorry and running transport business and he was also contractor and

earning Rs.20,000/- to 30,000/- per month and was contributing his earnings to the petitioners. On account of death of the deceased, the petitioners are not only subjected to loss of love and affection, but they are also subjected to loss of future hopes and have been subjected to mental agony. The 1st petitioner lost her life partner at the age of 38 years and petitioners 2 to 8 have lost their father. The accident took place due to the rash and negligent driving of the driver of the offending vehicle and the respondents 1 and 2 being owner and insurer of the vehicle are jointly and severally liable to pay compensation of Rs.20 lakhs.

4. The 1st respondent owner of the lorry so also the 2nd respondent Insurance Company both resisted the claim contending that only due to rash and negligent driving of the Hero Honda by the deceased, the accident occurred. They required the petitioners to prove the age, occupation and income of the deceased. They further pleaded that the claim of the petitioners is highly excessive, arbitrary and baseless.

5. The learned Tribunal framed three issues to fix the responsibility and examined the 2nd petitioner who is the son of the deceased as PW1 and one Md.Allauddin as PW2 who is an eye witness to the accident, and one Md.Samad as PW3 to prove the income of the deceased, besides exhibiting the documents as Exs.A-1-FIR, A2-Charge Sheet, A3-Inquest Panchanama, A4-P.M.Report, A5-MVI Report, A6-Insurance Cover Note and A7-

Driving Licence of the deceased and also Ex.B-1, certified copy of the insurance policy of the vehicle involved in the accident.

6. The Tribunal, on appraisal of evidence on record, and relying on the oral evidence of PWs1 and 2 and documentary evidence Exs.A1 and A2 came to the conclusion that due to rash and negligent driving of the Lorry belonging to the 1st respondent, the accident occurred and tendered the finding on Issue No.1 in favour of the petitioners.

7. On issue No.2, the Tribunal, on appraisal of evidence, arrived at the income of the deceased as Rs.3,000/- per month, having deducted 1/3rd towards personal expenses (3,000 x 1/3=1,000) and worked out the annual income at Rs.24,000/- as contribution of the deceased towards his family members, and taking the age of the deceased as 40 years, applied multiplier '12.79' and awarded an amount of Rs.3,06,960/- (Rs.24,000- x multiplier '12.79') besides awarding Rs.15,000/- to the wife of the deceased as consortium; and Rs.2,500/- towards funeral expenses, awarded a total amount of Rs.3,24,460/- as compensation payable by respondents 1 and 2 jointly and severally with proportionate costs and interest @ 9% per annum from the date of petition till the date of realization.

8. Dissatisfied with the award of compensation granted by the Tribunal, the petitioners, who are the legal heirs of the deceased, preferred the instant appeal impugning the award

seeking for enhancement of compensation with interest there on.

9. Heard learned counsel for the appellants and Sri G.Ramachandra Reddy, learned counsel for the 2nd respondent.

10. Learned counsel for the appellants submits that though the claimants claimed monthly income of the deceased as Rs.20,000/- to 30,000/-, the Tribunal has taken Rs.3,000/- per month as income of the deceased by holding that no documentary evidence is filed to prove the income of the deceased, except oral evidence. He also submits that the Tribunal has taken multiplier as '12.79' basing on the Judgment in ***Bhagwan Das v. Mohd.Arif*** [1], whereas as per the decision of the Apex Court in ***Sarla Verma and others v. Delhi Transport Corporation and Another*** [2] the relevant multiplier that has to be taken as '14' since the age of the deceased is 40 years at the date of accident. He also submits that the Tribunal has deducted 1/3rd of the income towards personal expenses, but as per the aforesaid decision of the Apex Court in **Sarla Verma's case** since the legal heirs of the deceased are more than six, only 1/5th has to be deducted towards personal expenses of the deceased. He further submits that in all the petitioners are entitled to conventional amount of Rs.70,000/- towards loss of estate, loss of consortium, funeral expenses etc,

[1] 1987 ACJ 1052
[2] (2009) 6 SCC 121

but the Tribunal granted only Rs.17,500/- under conventional heads.

11. On the other hand learned counsel appearing for the 2nd respondent submits that except oral testimony of PW3, there is no proof regarding income of the deceased, and that the Tribunal has rightly awarded compensation towards income of the deceased. He also submits that the Judgment relied on by the petitioners with regard to assessing the income of the deceased in ***Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited*** [3] is not applicable to the facts of the case, since the deceased was having lorry business and that the claimants could not produce any documentary evidence regarding the same.

12. The fact that the accident had occurred on account of rash and negligent driving of the driver of the Lorry, which finding tendered by the Tribunal since supported by the evidence of PW2, cannot be interfered with, as it is claimants appeal for enhancement of compensation.

13. Now, the short point that arises for consideration is, whether the petitioners are entitled to enhancement of compensation?

14. In this case though PW3 has stated that he was also having office in wooden Khoka at Kanteshwar, Nizamabad by the side of the office of the deceased and that the deceased was

[3] (2014) 2 Supreme Court Cases 735

earning Rs.20,000/- to 22,000/- per month by doing transport business, supplying materials and by maintaining two lorries, in the cross examination he stated that he is not aware of the PAN number of the deceased and that he does not know whether the deceased was paying income tax. In the Judgment relied on by the petitioners in ***Syed Sadiq's case (supra)*** at para 8 the Suprem Court held as follows;

> "….It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in *Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. reported in (2011) 13 SCC 236, has held as under: (SCC pp.242-43, paras 13-15)*
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> > *"13. In the instant case, it is not in dispute that the appellant was aged 35 years and was working as a coolie and was earning Rs.4,500/-per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs.100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the Court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant,*

in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork. Which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a coolie and in an around the date of the accident, the wage of a labourer was between Rs.100 to Rs.150 per day or Rs.4,500 per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4,500 to Rs.3,000 per month. We therefore, accept his statement that his monthly earning was Rs.4,500.

9. There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month."

15. The Supreme Court while dealing with the case of a coolie and also vegetable vendor made the above observations.

16. In the present case it is not the case of the appellants that the deceased is a Coolie, it is their specific case that he is

having transport business having two lorries and having office also. But, even a piece of paper is not filed by the appellants to show that the deceased is earning Rs.20,000/- to 25,000/- per month. As such, it cannot be said that merely basing on the oral evidence of PW3 the income of the deceased can be taken as Rs.20,000/-.

17. In the aforesaid Judgment in ***Syed Sadiq's case,*** the Supreme Court has taken Rs.6,500/- per month as income of a vegetable vendor, whereas in the present case it is claimed that the deceased is having transport business as such, the income of the deceased can be taken as Rs.5,000/- per month. As per the Judgment in ***Sarla Verma's case*** 1/5th of the amount can be deducted from the income of the deceased towards personal expenses. When the same is deducted from the annual income of Rs.60,000/-(60,000x1/5=12,000) the contribution to the family works out to Rs.48,000/-. The relevant multiplier is '15' for the age group between 40 to 45 years as per the table formulated by the Hon'ble Supreme Court in the very same decision in **Sarla Varma** referred to supra. When the said multiplier factor '15' is applied, the loss of dependency works out to Rs.7,20,000/-(48,000x15). In addition, the petitioners are also entitled to 25% thereon towards future prospects by virtue of the law declared by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others***[4] which works out to Rs.9,00,000(7,20,000 x 25%=

[4] 2017 ACJ 2700 = AIR 2017 SC 5157

1,80,000). The claimants are also entitled to a sum of Rs. 70,000/- towards conventional heads i.e. loss of estate, loss of love and affection and funeral expenses etc. Thus, the petitioners are entitled to a total amount of Rs.9,70,000/- towards compensation.

18. Accordingly, the MACMA is allowed granting compensation of Rs.9,70,000/- as against Rs.3,24,460/-, awarded by the Tribunal and the same is accordingly granted. The petitioner is entitled to interest on the compensation of Rs.3,24,460/- awarded by the Tribunal, at 9% per annum, and on the enhanced compensation of Rs.6,45,540/- at 7.5% per annum from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others** [5].

19. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

01.02.2018
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[5] 2013 ACJ 1403 = 2013 (4) ALT 35