HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No.478 OF 2007

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

1) Assailing the order dated 26.10.2006, passed in M.V.O.P. No.120 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur, the present appeal came to be filed under Section 174 of the Motor Vehicles act.

2) The appellants/claimants, who are three in number, filed an application under Sections 163-A, 166 and 140 of the M.V.Act claiming compensation of Rs.75.00 lakhs for the death of one Ch.Perumalla Reddy, who is the husband of petitioner No.1 and father of the petitioner Nos.2 and 3. The respondent No.1 is the owner and respondent No.2 is the insurer of Auto bearing No.AP-7X-6528. Respondent No.3 is the father of the deceased. On 30.09.2003 at about 4.30 p.m., while the deceased was going in a Maruthi Zen car bearing No.AP-16-AD-3839, from Guntur to Chirala, the driver of an auto bearing no.AP-7X-6528 coming from opposite direction drove the same in a rash and negligent manner and hit the car, near Andhra Muslim College, Ponnur road, Guntur. As a result of which, the deceased sustained severe injuries and died while he was being shifted to Govt. Hospital, Guntur. In respect of the said accident, a

case in Crime No.150 of 2003 came to be registered for the offence punishable under Section 304-A IPC against the driver of the auto.

3) The averments in the claim petition would show that the deceased was doing business in Seeds under the name and style of Mohan Seeds, at Yemmiganur in Kurnool District and also used to cultivate the lands. According to them the deceased used to earn Rs.4.00 lakhs per year. It is said that he was an income tax assessee and assessment proceedings were filed along with the claim petition to establish his income. Having regard to the above, it is said that his death, at a pre-matured age, caused immense loss to all the family members and hence an application came to be filed seeking compensation against the respondents. Respondent No.1 remained exparte. Respondent No.2 filed a written statement alleging that there was no rashness and negligence on the part of the driver of the auto and the accident occurred due to negligence on the part of the deceased. It is also disputed the age, income and avocation of the deceased. In any event, it is stated that the claim made is excessive and exorbitant.

4) On the basis of the above pleadings, the Tribunal framed the following issues:

i) Whether the accident occurred due to rash and negligent driving of the driver of Auto bearing No. AP-7X-6528?

ii) To what compensation, the petitioners are entitled and from whom?

iii) To what relief?

5) In support of their claim, the petitioners examined PWs.1 to 5 and got marked Exs.A1 to A.20 and Exs.X1 to X8, while the respondents examined R.Ws.1 and 2 and got marked Ex.B-1 to B-4.

6) After considering the evidence available on record, the Tribunal partly allowed the claim of the claimants directing respondents 1 and 2 to pay Rs.9,21,171/-, jointly and severally to the claimants, by taking the income of the deceased at Rs.1,48,528/- p.a.,; adopting multiplier '9'; deducting 1/3 towards personal expenses; and awarding Rs.10,000/- towards consortium and Rs.20,000/- towards loss of estate. Challenging the same, the claimants herein preferred the appeal seeking enhancement of the quantum of compensation.

7) Since no appeal is filed by the Insurance company, the fact that the accident took place due to rash and negligent driving of the auto stands established. The fact that the appellants are the claimants of the deceased also remains unchallenged. Therefore, the issue that arises for consideration in appeal is only with regard to quantum of compensation awarded by the tribunal.

8) The learned counsel for the appellants mainly submits that the trial court erred in not taking into consideration the income tax returns filed under Exs.A-7 and A-8 and Exs.X-1 to X-7. According to

him, the pattadar passbooks and certified copies of the sale deeds show that the deceased owned agricultural land and was deriving substantial income from the said land. He would further contend that the income tax returns filed for the year 1999-2000 would show the annual income of the deceased, during the assessment year 1999-2000 as Rs.3,21,680/-. That being the position, it is urged that the trial court erred in fixing the income of the deceased at Rs.1,48,528/- p.a. He would further contend that if the agricultural income of the previous years is taken into consideration, the claimants would be entitled to more amount of compensation than what has been awarded. He would further submit that the multiplier adopted by the trial court and the procedure for calculating the future loss of earnings of the deceased who was aged about 45 years, requires re-consideration. Hence, in view of the constitutional bench judgment of the Supreme court in ***National Insurance Company Limited v. Pranay Sethi*** **(SPECIAL LEAVE PETITION (CIVIL) NO. 25590 OF 2014, dated 31.10.2017),** he would submit that the claimants are entitled to more amount of compensation than what has been awarded.

9) On the other hand, the learned standing counsel appearing for the insurance company would submit that though the claimants are entitled to more amount of compensation in view of the recent judgment of the Constitutional Bench of the Apex court, but however submits that the annual income of the deceased which was taken on the basis of income tax returns cannot be found fault with. He would

submit that even if the argument of the learned counsel for the appellants is to be accepted, the claimants are only entitled for supervision charges, insofar as the income on the agricultural land. Having regard to the above, he would submit that to the extent indicated above, the trial court was right in fixing the income of the deceased at Rs.1,48,528/-.

10) The point that arises for consideration is whether the claimants, who are the wife and children of the deceased, are entitled for enhancement of compensation?

11) As the Insurance Company has not preferred any appeal, the manner in which the incident took place, the negligence of the Driver and the liability of the insurance company, cannot be found fault with. The only question that is to be considered is with regard to the quantum of compensation awarded to the claimants.

12) Relying upon the income tax returns filed by the deceased and also by the claimants after the death of the deceased, the learned counsel for the appellants would contend that the trial court should have fixed the income of the deceased at an higher rate than what has been fixed. In order to appreciate the same, it is necessary to refer to the evidence of P.Ws.1, 2 and 4. P.W.1 is the wife of the deceased. According to her, they were having Ac.10.00 of land and the deceased used to earn about Rs.4,00,000/- per annum on his business and agriculture. She deposed that the deceased used to

supply cotton to Maharashtra Seeds Corporation and also used to cultivate the lands by taking them on lease at Yemmiganur, Kurnool District. She further deposed that after the death of her husband, they sold away Ac.4.50 cents of land. She further deposed that deceased purchased Ac.11.48 cents of land under document No.327/2001 dated 31.03.2001 in her name and in the name of himself and four others. She also deposed that the deceased purchased a small extent of land 60 cents and 67 cents in Yemmiganur. She further states that the deceased used to cultivate the lands by taking them on lease from one M.Chandrasekhara Reddy for Rs.75,000/-. However, in the chief-examination itself, P.W.1 states that after the death of her husband, the lands belonging to her husband were given on lease as they were unable to cultivate the said land personally. P.W.1 was again recalled to mark the documents in proof of the same. In the cross-examination, P.W.1 admits that they are owning Ac.4.00 of wet land at Narsayyapalem village. She also admits that her son completed graduation in engineering at Hyderabad and her daughter was studying second year engineering at Hyderabad. After the death of her husband, they started living at Hyderabad due to education of their children. She further admits that they got about Ac.4.50 cents in all in Narasayyapalem and Yemmiganur, put together, which stands in the name of her husband. She admits that it is the same property as shown in Ex.A-11. She further admits in the cross-examination that she does not have any property in her name. She admits that she does not have any other document besides income tax returns to show that her husband was earning Rs.4 lakhs per annum.

13) P.W.2 is a practicing Chartered Accountant and was looking after the audit of accounts of the deceased, who was running his business, under the name and style of Sri Mohan Seeds at Yemmiganur. He placed on record Ex.X-1, the assessment order for the assessment year 2001-02. He also placed on record Ex.X-2, the returns filed by the wife for the assessment year 2003-04 i.e., immediately after the death of the deceased. In the cross-examination he admits that as on 31.03.2003 the value of the assets of the deceased was Rs.39,60,804/- as shown in the balance sheet and he was also having liabilities of Rs.36,77,213.49 ps.

14) P.W.4 is an Officer in the office of Assistant Commissioner, Income-tax, Kurnool. He was summoned to court with all the income tax returns filed by the deceased. His evidence shows that for the year 1999-2000, the deceased filed income tax returns under Saral form, showing the income as Rs.1,28,182.08 ps. For the assessment year 2002-03 the returns filed by the deceased show his total income at Rs.1,48,528/-. Ex.X-6 is Xerox copy of the income-tax returns filed under Form 2(D). However, for the assessment year 2003-04, as per the returns filed by the claimants, the income was shown at Rs.1,93,941.42 ps. apart from agricultural income of Rs.42,000/-. In view of the oral evidence coupled with the documentary evidence, the

learned counsel for the appellants would contend that the income of the deceased should be taken atleast Rs.1,93,000/- if not at Rs.4,00,000/- which was said to be the income of the deceased prior to his death.

15) As seen from the record, the income tax return Ex.X-6 which relates to the assessment year 2002-03 i.e., the year in which the deceased died, the income of the deceased was shown as Rs.1,48,528/- on business and no income was shown on agriculture. The tax paid on the said income was about Rs.20,000/- and odd. Since Ex.X-6 relates to the period during which death took place, we feel that the trial court was right in taking the income, as shown in the said document.

16) Learned counsel for the appellants would contend that the trial court failed to take into consideration the agricultural income of the deceased. As seen from the evidence, P.W.1 in her chief evidence refers to holding of Ac.11.00 and odd of land and her evidence further discloses that the said land was given on lease to others. In the cross-examination she admits that they were having only Ac.4.50 cents of land in Narasayyapalem and Yemmiganur put together. But the income that is generated from the said land was not spoken to by the witness. Though at one breath she says that the land was given on lease but failed to mention the amount for which the land was leased out. It appears that since the agricultural land was not yielding any

income, the deceased in his last returns did not show any income on the agricultural land. Even assuming for the sake of argument that the family members of the deceased were holding the land, the claimants are only entitled for the loss of supervisory charges over the said land since the income tax returns of the subsequent period filed by the first claimant shows an income of Rs.42,000/- from the said land. Having regard to the extent of land held by the family members of the deceased, which according to P.W.1 was about Ac.4.50 cents, the loss of supervisory charges can at the most be fixed to about Rs.12,000/- p.a. If the loss in supervisory charges is added to the income as fixed by the trial court, it would be around Rs.1,48,528/- + Rs.12,000/- = Rs.1,60,000/-.

17) Coming to the multiplier that has been adopted by the trial court, the learned counsel for the appellants would submit that the suitable multiplier would be "14" and not "9", as per the judgment of the apex court in ***Sarla Verma v. Delhi Transport Cases***[1].

18) At this stage, it is to be noted that the Tribunal did not take into consideration the future prospectus of the deceased. Admittedly, the deceased was aged about 45 years at the time of the accident. In "**Pranai Sethi" (1 supra)**, the Constitutional Bench held as under:

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[1] 2009 ACJ 1298 (SC)

"In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

19) Since the deceased was aged about 45 years, 25% of actual income should be added to the actual income of the deceased, for the purpose of calculating the loss of dependency. If the income of the deceased is taken at Rs.1,60,000/- per annum, if 25% of it is added to the income, the same comes to Rs.1,60,000/- + 40,000/- = Rs.2,00,000/-. If 1/3rd of income is deducted towards personal expenses of the deceased, the contribution of the deceased to the family would be Rs.1,33,333/- per annum. Adopting multiplier '14', as per the judgment of **Sarla Verma's case,** the loss of dependency would be Rs.1,33,333/- x 14 = 18,66,662/-. Apart from that the claimants are also entitled 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/-) in view of the judgment of the Apex Court in '**Pranai Sethi' (1 supra)**. Thus, in all, the claimants are entitled to Rs.19,36,662/-. The enhanced amount shall carry interest @ 6.5% per annum from the date of petition till the date of realization.

20) Accordingly, the appeal is disposed of. There shall be no order as to costs. Miscellaneous petitions if any pending in this appeal shall stands dismissed.

C.PRAVEEN KUMAR, J

N.BALAYOGI, J

Date: 04.01.2018

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