THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1116 of 2006

JUDGMENT :

This appeal is against the Award and Decree dated 14.2.2005 in O.P. No.26 of 2004 on the file of the Motor Accidents Claims Tribunal (District Judge) West Godavari, at Eluru, whereby the trial Court has partly allowed the claim petition granting compensation of Rs.1,83,100/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realization. The trial Court also directed that the respondents 1 and 2 are jointly and severally liable to pay the said amount and further directed to deposit the same within one month from the date of the order. The said amount was apportioned among claimants allotting Rs.91,550/- each and permitted them to withdraw a sum of Rs.41,550/- each and rest of the amount was ordered to be kept in two separate fixed deposits in any nationalized bank for a period of three years.

2. Aggrieved by the compensation awarded by the Tribunal, appellants/claimants filed this appeal.

3. The claim of the appellants in brief is as follows :

The claimants are parents of the deceased Prasad who was 22 years old and used to earn Rs.50,000/- per annum on agriculture.

While so, on 16.3.2003, while the deceased along with his friend was proceeding on a Hero Honda motorcycle bearing No.AP 37 F 9402 and when they reached near Nachugunta Village, the 1st respondent-driver of the APSRTC bus bearing No.AP 11 Z 955 drove the bus in rash and negligent manner and dashed the motorcycle in opposite direction, as a result, deceased Prasad succumbed to injuries on the spot.

The 2nd respondent filed written statement denying the material allegations made in the claim petition and contended that the deceased himself was responsible for the accident as there was no collision between the two vehicles. The rider of the motorcycle is responsible for the accident. The petition is bad for non-joinder of necessary parties i.e., insurer of the motorcycle. The claim is excessive.

4. The Tribunal, having heard and considered the allegations in the claim petition and the contents of the written statement filed by the 2nd respondent, settled the following issues for trial :

1) Whether the accident occurred due to rash and negligent driving of the APSRTC bus bearing No.AP 11 Z 955 driven by its driver – 1st respondent?

2) Whether the petitioners are entitled to claim any compensation? If so, to what amount and against which of the respondents?

3) To what relief?

Before the Tribunal, the appellants had examined P.Ws.1 to 3 and got marked Exs.A1 to A7. On behalf of the 2nd respondent, R.W.1 was examined and no documents were marked.

5. Aggrieved by the inadequate compensation awarded, the appellants/claimants preferred this appeal.

Firstly, the contention of the appellants is that the Tribunal, having taken the age of the mother for calculation of the compensation, wrongly arrived at the contribution of the deceased to his mother as 2/3rd till his marriage and 1/3rd after his marriage. The said view is illegal and irregular and ignoring the settled law that the parents of the unmarried deceased are entitled for the full compensation.

Secondly, the contention of the appellants is that the Tribunal erred in assessing the income of the deceased and it ought to have assessed the monthly income at Rs.4,000/- as the deceased was doing cultivation.

Thirdly, the contention of the appellants is that the Tribunal should have applied multiplier '15' as per the age of the mother, but not '11.5' and further ought to have awarded interest at 12% per annum, instead of 9% per annum.

6. *Per contra* the respondents contended that the Tribunal is right in assessing the income of the deceased at Rs.2,000/- per month

and applying the multiplier ’11.5’, but the Tribunal ought not to have allowed interest at 9% per annum.

7. The compensation is usually based upon the loss of the claimants’ dependency or earning capacity of the deceased. The courts have time and again observed that the compensation to be awarded is not measured by the nature, avocation or degree of injury or loss of income by the deceased.

8. In the case of ***Ramchandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited*** (AIR 2011 SC 2951) the Apex Court held that the Tribunal while assessing the loss of income has taken the disability to the whole body as 1/3rd of particular limb and has assessed the loss of income, at 1/3rd of 41% of the disability which comes to about 13.5%. So, the loss of income taken at 13.5% of Rs.3,000/- and has quantified the loss of future income at Rs.72,900/-. The Tribunal against the evidence that the appellant was aged 35 years, working as a coolie and was earning Rs.4,500/- per month at the time of accident, has reduced the income to Rs.3,000/- only on the assumption that the wages of the labourer during the relevant period i.e., in the year 2004 as Rs.100/- per day. This assumption has no basis. Before the Tribunal though Insurance Company was served, it did not choose to appear before the Court, nor did it repudiated 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 a sum of Rs.3,000/- per month. In and

around the date of accident in the year 2004 the wages of the labourer was between 100 to 150 per day or Rs.4,500/- per month and the said claim was honest and bona fide. Therefore, there was no reason for the Tribunal to have reduced the monthly earning of Rs.4,500/- to Rs.3,000/-.

9. In the instant case, the 1st claimant, father of the deceased, is examined as P.W.1. In the claim petition, the age of the deceased is shown as 22 years and occupation as cultivation and annual income as Rs.50,000/-. In the chief evidence affidavit P.W.1 stated that his family possessed nearly 6 ½ acres of land and the deceased used to cultivate the said land and fetch good income of not less than Rs.75,000/- on agriculture. For the last 4 or 5 years due to serious ailments, P.W.1 is not attending the cultivation and lands were leased out for a meagre amount of Rs.25,000/- per annum. Due to which, they have been losing more than Rs.50,000/- per annum on agriculture. P.W.2 is third party, whose evidence corroborates the evidence of P.W.1 that the deceased used to cultivate their lands and fetch a good income of not less than Rs.75,000/- per annum and due to sudden death, their family was badly affected. The petitioners leased out the lands on meagre amounts and there is loss of income of Rs.50,000/- per annum. During cross-examination, P.W.1 admitted that there is no proof with regard to the agricultural income. Similarly, P.W.2, during cross-examination, stated that he cannot give the survey number of the land of the petitioner and there was suggestion that he, being resident

of the same village, deposing falsehood to help P.W.1, which he denied.

10. Ex.A6 is the adangal copy and Ex.A7 is certificate issued by the Panchayat Secretary Yadavulu certifying that P.W.1 has got 0.92 cents in R.S. No.809, 0.50 cents in R.S. No.758/2, 0.48 cents in R.S. No.758/3, Ac.3.24 cents in R.S. No.653/1, Ac.1.27 cents in R.S. No.558/4, thus, in total possessed Ac.6.41 cents.

11. In Ex.A6 the pattedar is shown as Inti Gangaraju, father of P.W.1 and enjoyer as P.W.1 in respect of 0.92 cents in R.S. No.809. Karipetty Narayudu is shown as pattedar and P.W.1 as enjoyer in respect of 0.50 cents of land in R.S. No.758/2. Karipetty Brahmaiah is shown as patteder and P.W.1 as enjoyer in respect of 0.48 cents in R.S.No.758/3. Inti Narsaiah is shown as pattedar and P.W.1 as enjoyer in respect of Ac.3.24 cents in R.S. No.653/1. Inti Venkatrayudu is shown as pattedar and P.W.1 as enjoyer in respect of Ac.1.27 cents in R.S. No.558/4. The adangal does not show the deceased either as enjoyer or cultivator. The trial Court, having considered the oral evidence of P.Ws.1 and 2 and documentary evidence under Ex.A6 adangal copy, came to the right conclusion that Ex.A6 does not show the name of P.W.2 as he is in personal cultivation of the land. The name of the deceased does not appear in the adangal either as cultivator or enjoyer of the land, but the trial Court rightly came to the conclusion that because the deceased was 22 years old, he might have helped his father-P.W.1 in cultivation of the land.

12. It is a fact that the deceased was unmarried and no proof of income is filed, therefore, the trial Court came to the conclusion that the deceased's monthly income is Rs.2,000/- per month in a supervisor capacity and taking into consideration the age of the mother of the deceased as 42 years, the Tribunal stated that the deceased's contribution to the family would be 2/3rd till his marriage and 1/3rd after his marriage. The average of the said amount has come to Rs.16,000/- + Rs.8,000/- = Rs.24,000/-, after divided by 2, it comes to Rs.12,000/- per annum and the Tribunal applied multiplier 11.5, after taking the age of the mother of the deceased as 42 years, and awarded Rs.1,65,000/- (12,000 x 12 x 11.5) towards compensation, besides that the Tribunal awarded Rs.15,000/- towards mental agony and Rs.2,500/- towards funeral expenses and in total awarded Rs.1,83,100/-.

13. In the absence of any evidence with regard to the income of the deceased and having taken into consideration that Ex.A6 is in the name of P.W.1 and the deceased was no where shown in it either as cultivator or enjoyer of the lands, the trial Court is perfectly right in coming to the conclusion that the deceased ought to have helped his father in cultivation of the lands, he being 22 years old.

14. The finding of the Tribunal that the claimants did not file any proof of income even as a coolie is false, because there won't by any account or record showing the income of an agricultural labourer. Income of the labourer/coolie can be assessed by the Court basing on the material available on record. Therefore, we cannot expect the

claimants to produce any documentary evidence substantiating the income of the deceased as an agricultural coolie or loss of income by his death or that he used to assist his father in cultivation of their lands. The evidence affidavit of P.W.1 is that he used to earn Rs.4,000/- per month by cultivating lands to which there is no evidence. In the above case relied on by the petitioner there was rebuttal evidence produced by the respondent – Insurance company to the evidence of P.W.1. But, in this case, the respondents cross-examined P.Ws.1 and 2, but no documentary evidence was adduced, except the oral evidence of R.W.1. In the said decision it is the conclusion of the Apex court that in the year 2004 the wage of a labourer was between 100 to 150 per day. The incident in the present case also occurred on 16.3.2003, so by applying the same analogy, I am of the view that there was no reason for the Tribunal to arrive the monthly income of the deceased at Rs.2,000/- on the guess work, including the ground realities prevailing at the relevant point of time of the accident. I am of the view that minimum income at Rs.3,000/- per month is quite reasonable.

15. The trial Court arrived the contribution of the deceased to his mother as 2/3rd till his marriage and 1/3rd after his marriage and taking average, deducted 50% of the income in total.

16. In the case of ***Munna lal jain Vs. Vipin Kumar Sharma*** ((2015) 6 SCC 347) it was held that 50% of the income shall be deducted towards personal expenditure in case of unmarried, who is

aged below 30 years and adding 50% as future prospects is quite reasonable.

17. In ***Santosh Devi Vs. National Insurance Co. Ltd.*** ((2012) 6 SCC 421) the Apex court held that the deceased's age being 30 years, 50% is required to be added as future prospects.

18. Similarly, in the case of ***Rajesh Vs. Rajbir Singh*** ((2013) 9 SCC 54) the Apex Court held that in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for the purpose of computation of compensation by 50% where his age was below 40 years.

19. Therefore, from the above decisions, the settled law is that in case of a person below 40 years of age and who was having fixed income and wages, 50% of the income has to be added towards future prospects and in case of unmarried person, 50% of the income has to be deducted towards personal expenses.

20. There is no dispute that the deceased was a bachelor and unmarried and aged 22 years, the trial court has taken the age of the mother, who is 42 years old, for calculation of the compensation. The relevant multiplier applicable for the age group of 40 to 45 years as per the ***Sarla Verma's case*** ((2009) 6 SCC 121) is '14', but the trial Court has taken multiplier '11.5', which requires modification. Similarly, as already discussed above, the trial Court assessed the income at Rs.2,000/- per month, but the material on record and taking into

consideration the relevant rates of labour at the time of accident i.e., in the year 2003, the monthly income shall not be less than Rs.3,000/- per month. Accordingly, the monthly income at Rs.3,000/- per month is considered.

21. Having considered the income at Rs.3,000/- per month and adding 50% towards future prospects, the monthly income comes to Rs.4,500/-. After deducting 50% of the same towards personal expenses of the deceased, it comes to Rs.2,250/- per month. By applying the multiplier '14', the compensation comes to Rs.3,78,000/- (2,250 x 12 x 14). Besides that, the amounts under the other heads awarded by the tribunal viz., Rs.15,000/- towards mental agony and Rs.2,500/- towards funeral expenses are confirmed. Thus, the total compensation to which petitioners are entitled to comes to Rs.3,95,500/-.

22. In the result, the appeal is allowed with costs while setting aside and modifying the Award and Decree dated 14.2.2005 in O.P. No.26 of 2004 on the file of the Motor Accidents Claims Tribunal (District Judge) West Godavari, at Eluru, and granting compensation of Rs.3,95,500/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realization. The said amount is equally distributed among petitioners 1 and 2. The respondents 1 and 2 are jointly and severally liable to pay the said amount, which shall be deposited, after deducting the amount if any already paid or deposited,

within 30 days from the date of receipt of a copy of the judgment. On such deposit, petitioners are entitled to withdraw the same.

23. Advocate fee is fixed at Rs.2,000/-.

24. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

23rd October, 2018

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