**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**M.A.C.M.A.No.1661 OF 2011**

**JUDGMENT:**

Appellants-claimants filed this appeal against the order and decree dated 18.10.2010 passed in O.P.No.2274 of 2008 by the II Additional Chief Judge-cum-Motor Vehicle Accidents Claims Tribunal, City Civil Court, Hyderabad, granting compensation of Rs.4,14,000/- as against the claim of Rs.6,00,000/-, for the death of the deceased-Mohd Abbas in the accident occurred on 01.08.2008.

The appellants-claimants filed claim petition alleging that on 01.08.2008 at about 9.30 p.m. while the deceased was crossing the road near pillar No.101, Flyover Ring Road, near Langer House, Hyderabad, one tipper lorry bearing No.AP 11V 5827 driven by its driver in a rash and negligent manner came in high speed and dashed against the deceased, due to which, he sustained severe head injuries. Immediately, he was shifted to one private hospital and from there he was shifted to Osmania General Hospital, Hyderabad, for treatment where he was declared by the doctors as 'brought dead'. Police registered a case in crime No.308/2008 for the offence punishable under Section 304-A of Indian Penal Code against the driver of the lorry. Dependents, who are the wife, minor daughter, mother and brother of the deceased respectively, filed claim petition seeking compensation of Rs.6,00,000/- stating that the deceased was aged 34 years, hale and healthy at the time of accident, used to work as tailor and earn Rs.5,000/- per month.

The first respondent, owner of the tipper, filed counter denying the averments of the claim petition and stating that there was no rash and negligent driving on the part of the driver of the offending vehicle. It is also stated that the claim is excessive and exorbitant.

The second respondent filed a counter denying the averments of the claim petition and also denying its liability to pay the compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

1) Whether the accident resulting in death of Mohd. Abbas occurred owing to the rash and negligent driving of the driver of tipper lorry bearing No.AP 11V 5827?
2) Whether the petitioners are entitled to compensation and, if so, to what amount and from whom?
3) To what relief?

On behalf of the claimants, PWs 1 to 3 were examined and Exs.A.1 to A.5 were got marked. On behalf of the respondents, no witness was examined, however, Ex.B.1-copy of Policy was got marked.

The Tribunal based on the evidence of PWs 1 and 2 and documents under Exs.A.1 to A.5 came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle. Nothing contrary was elicited in the cross-examination of PW.2-eye witness. Hence, the Tribunal has rightly held that the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle and the same could not be found fault with in the absence of any contrary evidence.

The Tribunal has taken the income of the deceased notionally at Rs.3,000/- per month stating that the claimants failed to adduce any evidence to prove that the deceased used to earn Rs.6,000/- per month by doing tailoring work. The Tribunal opined that any skilful worker can easily earn Rs.100/- per day. Thus, the annual income of the deceased was arrived at Rs.36,000/- per annum. After deducting 1/3rd therefrom towards personal expenses, the Tribunal assessed the annual loss of dependency at Rs.24,000/-. As the deceased was aged 35 years at the time of his death, the Tribunal has adopted the multiplier of '16' as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[1] and thereby calculated the loss of dependency as Rs.3,84,000/-. In addition, the Tribunal granted Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Thus, in total the Tribunal granted the compensation of Rs.4,14,000/- with proportionate costs and interest @ 7.5% per annum by fixing the liability on all the respondents jointly and severally. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants filed this appeal seeking enhancement of compensation.

Learned counsel for the appellants would contend that the Tribunal grossly erred in taking the notional income of the deceased as Rs.3,000/- per month when the evidence of PWs 1 and 3 was to the effect that the deceased was earning Rs.5,000/- per month by working as tailor. There is no reason for the Tribunal to disbelieve the evidence of PWs 1 and 3 in not taking the earnings of the deceased as Rs.5,000/- per month. He would further contend that the deceased used to earn Rs.5,000/- per month by working as a tailor and he is a self employed person. Hence, the

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[1] 2009 (6) SCC 121

appellants are also entitled for future prospects. He would further contend that the Tribunal ought to have granted Rs.40,000/- towards loss of Consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses in view of judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others***[2]. Accordingly, he seeks enhancement of the compensation awarded by the Tribunal.

Sri P.Venkat Reddy, learned counsel appearing for the first respondent, would contend that the Tribunal has granted just compensation and the appellants are not entitled by any enhanced compensation. He made his submissions to sustain the award granted by the Tribunal.

*In spite* of receiving notice and printing the name of Sri PNA Christian, learned counsel appearing for respondent-insurance Company, none appeared.

In the facts and circumstances of the case and in considered view of this Court, the evidence of PWs 1 and 3 is to the effect that the deceased was doing tailoring work and earning Rs.5,000/- per month. The accident took place in the year 2008 and the deceased was a tailor. Hence, the claim of the appellant that the monthly earnings of the deceased were Rs.5,000/- is fair and reasonable. The evidence of PWs 1 and 3 is suffice to come to the conclusion that the deceased used to earn Rs.5,000/- per month by doing tailoring work. The Tribunal ought to have taken the monthly income of the deceased as Rs.5000/-. Thus, the annual income of the deceased comes to Rs.60,000/- (Rs.5,000 X 12). As the deceased was a self employed person as he was doing tailoring

[2] 2017 ACJ 2700

work, the claimants are entitled for 40% of his income towards loss of future prospects as per the judgment of the Hon'ble Supreme Court in ***Pranay Sethi (2 supra)***, as the deceased was below 40 years at the time of accidents, which works out to Rs.24,000/- per annum (Rs.60,000 X 40%). Thus, the total earnings of the deceased would be Rs.84,000/- (Rs.60,000 + Rs.24,000/-). Since the claimants are four in number, 1/4th has to be deducted from the income of the deceased towards personal expenses of the deceased and as the deceased was aged about 35 years, the multiplier of '16' is applicable, in view of the ratio laid down in ***Sarla Verma (1 supra)***. Thus, the loss of dependency would be Rs.10,08,000/- [(Rs.84000 X 3/4) X 16]. In addition, the claimants are entitled for Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and the first appellant/claimant is entitled for Rs.40,000/- towards loss of consortium. Accordingly, the compensation awarded by the Tribunal is enhanced to Rs.10,78,000/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization, as ordered by the Tribunal. Though the claim of the appellants before the Tribunal was only for Rs.6 lakhs, they filed I.A.No.1 of 2018 seeking amendment of the claim from Rs.6 lakhs to Rs.15 lakhs and the same was allowed by this Court, subject to payment of difference of court fee.

Out of the total compensation of Rs.10,78,000/-, appellant Nos.1 to 3, who are the wife, daughter and mother of the deceased, are entitled for Rs.3 lakhs each and the fourth appellant-brother of the deceased is entitled for Rs.1,78,000/- with proportionate costs and interest. The entire compensation amount, duly deducting the amounts already deposited, if any, shall be deposited to the credit of the O.P. before the Tribunal by the respondents within a period of two months from the date of receipt of a copy of this order. On such deposit, claimants 1, 3 and 4 are entitled to withdraw their respective share amounts, subject to payment of difference of Court Fee as ordered by this Court in I.A.No.1 of 2018. However, the share amount of minor appellant shall be kept in fixed deposit in any nationalized bank till she attains majority.

Accordingly, the appeal is allowed in part to the extent indicated above.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

**(M.GANGA RAO, J)**

02.11.2018
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