THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.1792 OF 2006

JUDGMENT

Questioning the quantum of compensation granted by the court of III Additional Metropolitan Sessions Judge cum XVII Additional Chief Judge at Hyderabad in O.P.No.1830 of 2002 dated 21.04.2006, Insurance Company filed the present appeal.

The claimants are the wife, children and mother of the deceased.

In the claim statement it is stated that on 26.03.2002 at about 11.30 a.m., when the deceased Y.Mohan, was proceeding on his scooter bearing No. AP 10 M 9026, from Mettuguda to Secundeerabad side, MCH lorry bearing No. AP 11 V 8461, came in his opposite direction in a rash and negligent manner and dashed against his scooter, on account of which, he fell down on the road and died on the spot.

The Duty Traffic Constable present there, shifted him to Gandhi Hospital, Secunderabad, wherein the doctor declared him as dead. On complaint, Police, Chilakalaguda Police Station, registered a case in Cr.No.109/2002 under Section 304-A IPC, against the driver of the lorry bearing No. AP 11 V 8461 and took up investigation.

It is stated that the deceased was an employee in South Central Railways, Secunderabad and was getting a monthly salary of Rs.8,100/- and he was contributing the same to his family members, and due to his death in the said accident, the claimants have lost their love and affection and head of their family, as the deceased was only the earning member of their family. Therefore, the claimants filed claim petition under Section 166 of Motor Vehicles, Act, 1988, claiming compensation of Rs.10,00,000/- for the death of the deceased from the 1st respondent, who is the owner of the crime lorry and the respondent No.2, who is the insurer of the said lorry with policy No. 551107 / 2001/6302123(Ren.2000/6502209) 205380 – Policy HRO .No.026946 valid from 7.11.2001 to 6.11.2002.

The 1st respondent – owner of the vehicle filed counter affidavit and while denying the age, relationship, income and manner of accident; and further contending that the compensation claimed is excessive and that the vehicle is insured with 2nd respondent, sought for dismissal of the claim petition against him. Subsequently, the 1st respondent remained *ex parte* before the lower court.

The 2nd respondent – insurer, in addition to above grounds taken by the insured/owner, further contended that the driver of the crime lorry was not holding valid licence and that it amounts to violation of policy conditions, therefore, sought for dismissal of claim petition.

Based on the above pleadings, the court below framed the following issues for trial:

1. Whether the deceased died in the accident that took place due to rash and negligent driving of driver of the lorry bearing No. AP 11 V – 8461?
2. Whether the petitioners are entitled to the compensation, if so, to what amount and from whom?
3. To what relief?

To prove their claim, claimants got examined P.Ws.1 to 3 and got marked Exs.A-1 to 5. On behalf of 2nd respondent – insurer, R.Ws.1 and 2 were examined and Exs.B-1 to B-4 and Ex.X-1 were got marked.

With regard to accident, considering the evidence of P.W.1, who is the wife of the deceased and as respondents did not lead any evidence disputing the version of P.W.1 and further relying on Exs.A-1 and A-2, which are the certified copies of FIR and Charge sheet, the trial court recorded finding of fact that the accident was caused due to rash and negligent driving of the driver of the crime vehicle, and the deceased died in the said accident.

Further, considering the evidence with regard to earnings and the age of the deceased, and claim of the claimants under other heads, court below awarded total compensation of Rs.4,85,000/- with interest at the rate of 9% per annum from the date of the petition till the date of realization. The court below also passed directions with regard to apportionment of compensation among claimants and manner of deposit of amount and its payment.

The Tribunal found that there is violation of terms and conditions of policy by the insured and, therefore, held that insurer is not liable to pay compensation, but relying on the judgment of Apex Court in ***NATIONAL INSURANCE CO. LTD. Vs. SWARAN SINGH AND OTHERS***[1], directed the insurer to pay compensation to the claimants at the first instance and then recover it from the insured.

[1] (2004)3 SCC 297

Now questioning the quantum of compensation, the insurance company filed the present appeal. Learned Standing Counsel appearing for the insurance company contended that the compensation granted by the court below is excessive. He stated that as per the Ex.A-4 salary certificate of the deceased, though he was shown as getting gross salary of Rs.7,135/-, after deductions of loans, he was getting only an amount of Rs.1,906/- as net salary. Instead of taking the said amount as income of the deceased per month, court below has taken the amount of Rs.3,791/- as income of the deceased, while assessing the compensation. He contended that the deceased was aged 41 years, therefore, the court below ought to have adopted the multiplier of '12' instead of '15'. The learned counsel further contended that the Tribunal granted interest on the compensation amount at 9 per cent per annum instead of 6 per cent per annum and, therefore, sought to reduce the rate of interest. With these contentions, the learned counsel sought to reduce the quantum of compensation.

Learned counsel for the claimants supporting the impugned order, sought to dismiss the appeal.

In view of the above rival contentions, the issue that arises for my consideration is whether the compensation awarded by the court below warrants any interference, if so, to what extent?

P.W.1 is the wife of the deceased and she deposed that her husband was working in South Central Railway, Secunderabad and getting salary of Rs.8,700/- per month and she got marked Ex.A-4 salary certificate of her husband issued by the office of Chief Workshop Manager, Carriage Works, Lallaguda, Secunderabad, South Central Railway dated 19.06.2002 for the month of February, 2002. She also examined P.W.3, Head Clerk of the said workshop, to prove the employment and salary of the deceased.

As per Ex.A-4 salary certificate, deceased was working in the designation of Tech . II, with gross salary of Rs.7,135/- per month and after deductions, he was getting net salary of Rs.1,906/-. The court below found that the deductions from the salary of the deceased at Rs.500/-towards H.B.advance; Rs.150/- towards festival advance; Rs.847/- towards CCS loan; and Rs.388/- towards CDL loan; were temporary deductions towards loans and that they would not continue entire service of the deceased. Thus, the court below has added the amount to Rs.1,885/-, under the above said deductions, to the net income of the deceased, in arriving at the monthly income of the deceased. Therefore, the contentions of the learned counsel for the appellant / insurer that court below has taken income of the deceased at Rs.3,791/- instead of Rs.1,906/-, cannot be sustained.

The lower court accordingly taking the monthly income of the deceased at Rs.3,791/- (Rs.1906 + Rs.1,885/-) and after deducting 1/3rd towards his personal expenses, held that the deceased would be contributing his remaining amount to his family, at Rs.2,528/- per month.

The deceased as per the claim statement is shown as aged 41 years. Therefore, the appropriate multiplier as per the judgment of Apex Court in ***SARLA VERMA v. DELHI TRANSPORT CORPORATION***[2] for the age group of 41 to 45 is '15'. The court below rightly applying the multiplier of

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[2] (2009)6 SCC 121

'15', arrived at compensation of Rs.4,55,040/- towards loss of earnings. Court below awarded Rs.15,000/- towards loss of estate to the 1st claimant, who is the wife of the deceased and also Rs.15,000/- towards loss of consortium, and thus in all, the claimants were awarded compensation of Rs.4,85,040/-. Having regard to the facts and circumstances and the evidence on record, I do not find any reason to interfere with the same.

With regard to rate of interest on the compensation amount, the Apex Court in ***TAMILNADU STATE TRANSPORT CORPORATION LTD. v. RAJAPRIYA***[3], taking note of the then prevailing rate of interest on bank deposits, directed for lowering the rate of interest fixed by the Tribunal at 9% per annum and altered the same to 7.5% per annum. Following this judgment, the Apex Court in another judgment in ***DHARMPAL vs. U.P. STATE ROAD TRANSPORT CORPN.***[4] also awarded interest at the rate of 7.5% per cent per annum on the compensation amount from the date of application, till the date of payment.

Following the above judgments of Apex Court, rate of interest awarded by the court below on the compensation amount is reduced from 9% to 7.5% per annum. The rest of the impugned award is confirmed.

The issued framed is answered accordingly by modifying the rate of interest on the compensation amount from 9% per 7.5% per annum.

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[3] AIR 2005 SC 2985
[4] MANU SC 7680 2008

The appeal is accordingly allowed in part to the extent indicated above. Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:09—02—2018
AVS/TK