HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No. 871 of 2009

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

1) Not being satisfied with the quantum of compensation awarded in the judgment (Award) dated 14.10.2008, passed in M.V.O.P.No.415 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Ongole, the claimants preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"), seeking enhancement of compensation.

2) For the sake of convenience, the parties will hereinafter be referred to as arrayed in M.V.O.P.

3) The facts in issue are as under:

The claimants, who are the parents and un-married brother of one B.Madhu Prasad, filed a claim petition under Section 166 of the Act, claiming compensation of Rs.50,00,000/- for the death of B. Madhu Prasad (hereinafter referred to as "the deceased") in a road accident that took place on 25.08.2007. It is stated that on the fateful day, the deceased along with his friends, were returning from Tirupati to Ongole in Car bearing No. KA 53 M 5874 and when they reached Golagamudi Cross Road on NH5 road, one lorry bearing No.AP 26 W 5958 driven by the 1st respondent in a rash and negligent manner without blowing horn dashed against the car of the deceased. As a result of which, the oil tank of the lorry got separated from the vehicle, and the car got stranded in flames, which lead to the death of the inmates of the car. In respect of the above accident a case in Crime No.288 of 2007 of Nellore Rural Police Station came to be registered against the driver of the lorry. It was stated that the deceased was aged about 27 years on the date of the accident, working as a Area Manager, ICICI Prudential Life Insurance Company and earning Rs.36,400/- per month. Due to sudden death of the deceased, the claimants lost their only source of income and suffered lot of mental agony. Since the accident took place due to the rash and negligent driving by the first respondent, as the vehicle was owned by the second respondent and insured with the third respondent, an application was filed against all the respondents making them jointly and severally liable to pay compensation.

4) Respondent Nos.1 and 2 remained *ex parte,* while the third respondent filed its counter denying the manner in which the accident took place. It also denied the age, income and occupation of the deceased. It was specifically stated that the accident was an outcome of contributory negligence of the driver of the Car as well. It is also stated that the petition is bad for non-joinder of necessary parties. In any event it is stated that the claim made is excessive and exorbitant.

5) Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the deceased died due to rash and negligent driving of the driver of the lorry of R2?
2. What is the correct age and income of deceased as on the date of the accident.
3. Whether the petitioners are entitled for compensation, if so, to what extent and from whom?
4. To what relief?

6) In support of their case, the claimants examined PWs.1 to 3 and got marked Exs.A1 to A10. On behalf of the respondents, RW.1 was examined and Exs.B1 and B2 were marked.

7) After analyzing the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to contributory negligence on the part of the driver of the lorry and the driver of the car in the ratio of 80% and 20% respectively and awarded a sum of Rs.17,60,800/- as compensation with interest. Challenging the said findings the present appeal is filed.

8) Learned counsel for the claimants would submit that there was no negligence on the part of the driver of the Car and incident was due to driver of the lorry driving the vehicle in a rash and negligent manner without blowing the horn. The police also filed a charge sheet against the driver of the lorry only. He further submits that the other deceased in this accident filed

M.V.O.P.No.464 of 2008 on the file of the Motor Accident Claims Tribunal (I Additional District Judge), Prakasam at Ongole making the insurance company of the Car also as party.

9) Learned counsel for the Insurance Company would submit that the finding of the Tribunal that there was contributory negligence on the part of the driver of the lorry as well as the driver of the Car assessing it in the ratio of 80% and 20% respectively, warrants no interference. However, the Counsel for ICICI Lombard Insurance Company, who is impleaded as a party herein, would submit that the matter requires to be remanded since they were not heard while award being passed against them.

10) The point that arises for consideration is whether the compensation awarded by the Tribunal is just and reasonable and whether there was any contributory negligence on the part of the driver of the Car, in causing the accident.

11) Admittedly, PW.1 is not an eye witness to the incident. Therefore, to decide as to whether the driver of the car, in which the deceased was traveling, also contributed to the accident, it would be useful to refer to the evidence of PW.2, who is an eye witness to the accident. PW.2 in his evidence deposed as under:

> "I was working with NH5 as Security guard at Golegamudi cross roads at the time of accident. It was about one year ago the accident took place

> and the date of accident is 25th. The time of accident is about 7.30 p.m. I was on duty at the time of accident. It was a distance of one furlong from the place of accident. I heard a big sound on hearing the sound, I alerted and saw a lorry after hitting the car went away from the place of accident. The car was at the point of accident. The Oil tanker of the lorry also in the place of accident. The said car was burnt due to fire, the burst of the oil tanker. The persons inside the car also burnt. The said accident was occurred due to rash and negligent of lorry driver. I gave police report. It was numbered as Ex.A1."

12) From the evidence of PW.2, it is clear that on the date of incident he was on duty as a Security Guard at Golagamudi cross road. At about 7.30 p.m., he heard a big sound from the place of accident and saw a lorry hitting the car and leaving the place. Due to burst of the oil tanker, the Car and the inmates of the Car got burnt. Though he was cross-examined at length, nothing useful came to be elicited to discard his evidence. It was elicited that the speed breakers were available at the place where the road from Kondayapalem joins NH5 and no speed breakers are there on the NH5 ie. at the place where the accident took place.

13) The contents of the charge sheet (Ex.A2) would show that the driver of the lorry drove the vehicle in a rash and negligent manner, while getting on to NH-5 from Kondayapalem road. Due to the impact of the collision, the fuel tank of the lorry got

detached from the lorry and fell on the road. The diesel from the tank sprinkled all over, and flames exploded due to impact on the collision, leading to flames engulfing the Car. Apart from that, RW1, admitted in his cross-examination that while crossing the roads, the driver of the lorry has to take utmost caution. The rough sketch which was marked as Ex.B2, would show that the car was proceeding on NH5 road ie., from Chennai towards Ongole and the lorry was coming from Kondayapalem road joining the NH5 ie. from eastern side of NH5. The rough sketch further shows that there was a speed breaker on the road of Kondayapalem joining the NH5. Even though there was a speed breaker on the road from where the lorry came, the driver of the lorry without observing the vehicles which are passing on NH-5 road, drove it in a rash and negligent manner and dashed the Car. As the lorry was attached with a oil tanker loaded with oil, which is inflammable, the driver should have been more cautious and careful while driving the lorry. Had he been little cautious, the accident as alleged in this case could have averted. Apart from that, as per the contents of the charge sheet, the driver of the lorry came onto NH-5 road without blowing horn, which resulted in collision of lorry with the car, thereby the oil tank of the lorry got detached from the lorry, spread the oil around the place and the flames emanating there from engulfing the car. In the absence of any care and caution which ought to have been taken by the driver of the lorry, the finding of the Tribunal in holding the driver of the Car also responsible for the accident cannot be accepted, more so when there is no evidence, in any form, to show the negligence of the Car driver.

14) The learned counsel for the appellants further contended that the Tribunal erred in applying the multiplier, by taking the age of the mother of the deceased for calculating the loss of income. He further submits that the loss in future prospects was not considered by the trial Court.

15) The learned counsel for the insurance company would submit that as the deceased was a bachelor, the Tribunal was right in taking the age of the mother of the deceased while applying multiplier.

16) The Apex Court in *National Insurance Co. Ltd., vs. Pranaysethi and others*[1] held that "the age of the deceased should be the basis for applying the multiplier". Admittedly, the deceased was 27 years old at the time of the accident. In view of the ratio laid down in *Sarla Verma v. Delhi Transport Corporation*[2] the suitable multiplier to be adopted for calculating the loss of earnings would be '17'. Further, in view of the judgment of the Apex Court in *National Insurance Co. Ltd., vs. Pranaysethi and others (1 supra)* 40% to the income of the deceased has to be added for calculating loss of earnings towards future prospects, when there is fixed income and the age being below 40 years. Taking the income of the deceased at

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[1] (2017) ACJ 2700
[2] (2009) 6 SCC 121

Rs.21,000/-, as fixed by the trial Court and if 40% of the income is added to the actual income of the deceased towards future prospects, the total income of the deceased would be Rs.21,000/- + Rs.8,400/- = Rs. 29,400/- per month. As the deceased was a bachelor, the deduction towards personal and living expenses, should be 50% in view of the judgment of the Apex Court in Sarla Verma case (2 supra), wherein it was held as under:

> "31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."

17) In view of the judgment in Sarla Verma case (2 supra), 50% of the amount is to be deducted towards personal and living expenses as the deceased was a bachelor at the time of the accident. After deducting 50% amount towards his personal and living expenses, the contribution of the deceased would be

Rs.14,700/- per month. Applying multiplier '17' the total loss of dependency would be Rs.14,700/- x 12 x 17 = Rs.29,98,800/-. In view of the Judgment of the Apex Court in Pranaysethi case (1 supra) the appellants also entitled to a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, in all the appellants are entitled to Rs.30,28,800/-.

18) Accordingly, the appeal is partly allowed enhancing the compensation from Rs.17,60,800/- to Rs.30,28,800/- to be paid by National Insurance Company (respondent No.3) in view of the finding that there was no contributory negligence from the driver of the Car. The enhanced amount will carry an interest of 6% p.a. from the date of petition till the date of realization.

19) There shall be no order as to costs in the appeal. As a sequel, miscellaneous applications pending, if any, shall stand closed.

C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

13.07.2018
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