THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4221 of 2004

**JUDGMENT:**

Having not been satisfied with the quantum of compensation awarded, the claimants preferred this appeal, under Section 173 of the Motor Vehicles Act, 1988, ('the Act' for short), assailing the order/award, dated 17.05.2000, in OP.No.459 of 1997 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District at Saroornagar, Hyderabad.

**2.** I have heard the submissions of the learned counsel for the appellants/claimants ('the claimants' for brevity) and of the learned counsel for the 2nd respondent/insurance company ('insurance company' for brevity). The 1st respondent/owner-cum-insured of the vehicle involved in the subject accident remained *ex parte*.

**3.** At the outset, it is to be noted that the wife, children and father of the deceased, Babu Rao Patel, [hereinafter referred to as 'the deceased'] filed the claim petition before the Tribunal claiming a compensation of Rs.4,00,000/- on account of the untimely death of the deceased due to his involvement in the subject motor vehicle accident. They *inter alia* pleaded that as on the date of the accident, the deceased, aged 32 years, was hale and healthy and used to work as an auto driver and earn Rs.2,500/- per month and that on account of the untimely death of the deceased due to his involvement in the subject accident, the claimants were put to mental shock and great hardship. Apart from other contentions, the relevant contention of the insurance company is that the compensation claimed is high, excessive and unjust. Further, the insurance company put the claimants to strict proof of the age, occupation and income of the deceased and their entitlement to the compensation claimed. On merits, the Tribunal awarded a compensation of Rs.1,49,600/- with interest at 12% per annum from the date of petition till the date of deposit with proportionate costs and fastened joint and several liability on the respondents 1 & 2 (insured and insurer) to pay the afore-stated compensation. As already noted, not having been satisfied with the quantum of compensation awarded, the claimants filed this appeal.

**4.** At the hearing, learned counsel for the claimants contended as follows: - 'The Tribunal erroneously fixed the monthly income of the deceased-auto driver at Rs.1,200/- per month though the case of the claimants is that he was earning Rs.3,500/- per month as on the date of his death. The Tribunal did not add any amount to the said income of the deceased towards future prospects. The Tribunal erroneously applied multiplier '12' though the appropriate multiplier applicable is '16' as per the decision in **Sarala Verma v. Delhi Transport Corporation and another**[1] in view of the fact that the deceased was 32 years of age as on the date of his death. The Tribunal awarded meagre amount of Rs.15,000/- towards non pecuniary damages and Rs.5,000/- towards consortium. The Tribunal did not award any compensation under the heads 'funeral expenses' and 'loss of estate'. Though the claimants 2 to 4, who are the son and daughters of the deceased, are minors, no compensation is awarded under the heads 'loss of love & affection and career guidance'. Therefore, the total compensation awarded by the Tribunal is unjust and unfair. Hence, the same requires upward revision. By any standards that may be

[1] 2009 ACJ 1298

applied, the sum of Rs.4,00,000/- claimed as compensation by the claimants is just and fair and the said compensation ought to have been awarded by the Tribunal by allowing the claim petition as prayed for. The Tribunal ought to have seen that the claimants are entitled to more compensation than claimed and that the Tribunal is empowered to award just and fair compensation irrespective of the claim made in the claim petition.'

**5.** Learned counsel for the insurance company contended that in the claim petition, the claimants stated that the deceased was earning Rs.2,500/- per month but the Tribunal rightly fixed the monthly income at Rs.1,200/- per month considering the fact that the relevant year of accident is 1996. He would further submit that an amount of Rs.20,000/- is awarded towards non pecuniary damages and consortium and that the compensation of nearly Rs.1,50,000/- cannot be said to be unjust and unfair and hence, the same needs no modification and that the appeal is devoid of merit and is liable to be dismissed. He would further submit that the Tribunal awarded interest at huge rate of 12% per annum though the normal and just rate of interest is 7.5% per annum and, therefore, the interest rate requires to be scaled down.

**6.** The points that arise for determination are:

**Whether the compensation awarded by the Tribunal is not reasonable, just and fair in the facts and circumstances urged by the claimants? And, if so, what shall be the reasonable, just and fair compensation to be awarded to the claimants? To what relief?**

**7.** I have given earnest consideration to the facts and submissions.

**8.** Dealing first with the amount of compensation to be awarded under the head 'loss of dependency', it is necessary to deal with necessary pleadings, evidence and the legal position obtaining. Though the claimants claimed that the deceased was of 32 years of age as on the date of accident, a perusal of the crime records, namely, exhibit A1, certified copy of FIR; exhibit A2, certified copy of charge sheet; exhibit A4, certified copy of inquest report, and exhibit A6, certified copy of post mortem report, would show that the age of the deceased was mentioned in the said records as either 36 years or 35 years. Hence, the age of the deceased as on the date of his death can safely be taken as 36 years. In the claim petition, the claimants pleaded that the deceased was earning Rs.2,500/- per month as an auto driver. However, PW1 deposed that the deceased was earning Rs.3,000/- per month. As no documentary evidence is produced to show the occupation and income of the deceased, the Tribunal fixed the income of the deceased at Rs.1,200/- per month; and, after deducing Rs.300/- from the said sum towards the personal and living expenses of the deceased, the Tribunal determined the annual income of the deceased at Rs.10,800/- [Rs.900 x 12]. Though no independent documentary evidence like the driving licence or any other document is produced to show occupation and income of the deceased, yet the crime records viz., the copies of FIR and inquest report disclose that the deceased is an auto driver. Therefore, this Court is satisfied that there is ample evidence to show that the deceased is an auto driver by occupation. Accordingly, his monthly net income is determined at Rs.2,000/-. As the number of dependants is five, a $1/4^{th}$ can be deducted towards his personal and living expenses. If so deducted, the monthly income of the deceased works out to Rs.1,500/-. To this, an addition of 40% is to be made towards future prospects since the deceased was self employed and as the age of the deceased was below 40 years of age as on the date of his death. [See: **National Insurance Co. Ltd., v. Pranay Sethi and others**[2]]. If so added, the monthly income of the deceased works out to Rs.2,100/-. Accordingly, the annual loss of dependency works out to Rs.25,200/- [Rs.2,100/- x 12]. The multiplier should be chosen with reference to the age of the deceased and as per column number 4 of the table given in the decision in **Sarla Verma** (supra). Keeping in view the facts and circumstances of this case and having regard to the determined age of the deceased and the probable period of his active career, the appropriate multiplier is fixed at `15' (fifteen). If the above multiplicand is multiplied by the said multiplier, the compensation under the head 'loss of dependency' works out to Rs.3,78,000/- [Rupees Three Lakhs Seventy Eight Thousands only].

**9.** Coming to the other amounts of compensation, it is to be noted that the Tribunal awarded Rs.15,000/- towards non pecuniary damages besides Rs.5,000/- towards loss of consortium; but, did not specifically award any compensation under the heads 'funeral expenses', 'loss of love and affection' and 'loss of estate'. Following the ratio in the decision in **Pranay Sethi** [2nd supra] Rs.15,000/-, Rs.40,000/- and Rs.15,000/- are respectively awarded under the heads 'loss of estate', 'loss of consortium' and 'funeral expenses'. In the decision in **Anjani Singh and Ors. V. Salauddin & Ors**[3], the Supreme Court by following the ratio in a three Judge Bench decision in **Rajesh and Ors. V. Rajbir Singh and Ors**[4] had awarded in that case Rs.1,00,000/- towards 'loss of love and affection' for the children. In the case on hand, the 2nd claimant, aged about 13 years as on the date of accident, was five years away from the

[2] 2017 (6) ALD 170
[3] 2014 ACJ 1565 = 2014 (6) SCALE 55
[4] (2013) 9 SCC 54

date of attaining majority and the other claimants 3 & 4 are aged 7 years and 4 years. Hence, a sum of Rs.1,00,000/- is awarded under the head 'loss of love & affection and loss of career guidance to the children'.

**10.** Accordingly, the claimants are held entitled to the following compensation amounts:

| Sl. No. | Head of compensation | Amount (in Rs.) |
|---|---|---|
| (1) | Loss of dependency | 3,78,000-00 |
| (2) | Loss of estate | 15,000-00 |
| (3) | Loss of consortium | 40,000-00 |
| (2) | Funeral expenses | 15,000-00 |
| (3) | Loss of love & affection and career guidance | 1,00,000=00 |
| | Total | 5,48,000=00 |

**(Rupees Five Lakhs Forty Eight Thousands only)**

The claimants had claimed a compensation of Rs.4,00,000/-. The compensation as determined and awarded worked out to Rs.5,48,000/- which is more than the amount claimed by the claimants. In **Nagappa** v. **Gurudayal Singh and others**[5]**,** the Supreme Court had held that under the M V Act there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount and that the function of the Tribunal/Court is to award just compensation, which is reasonable on the basis of the evidence produced on record. Thus, as per the determination supra, the just, reasonable and fair compensation to which the claimants are entitled to is Rs.5,48,000/-. The enhanced compensation is Rs.3,98,400/- [Rs.5,48,000/- - Rs.1,49,600/-]. In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. Since the Insurance Company did not prefer any appeal assailing its liability to pay the compensation and the only question involved in this appeal is in regard to the quantum of compensation, there are

[5] AIR 2003 SC 674

no other issues to be adverted to and decided in this appeal. Therefore, it follows that the respondents 1 & 2 are jointly and severally liable to pay the additional compensation amount awarded to the claimants. The points are accordingly answered.

**11.** Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award simple interest at the rate of 7.5% per annum from the date of the claim petition as per the ratio in the decision in **Mohinder Kaur and others v Hira Nand Sindhi**[6] . On the compensation already awarded, the trial Court had granted interest at 12% per annum simple.

**12.** In the result, the appeal is allowed with costs awarding a total compensation of Rs.5,48,000/- (Rupees Five Lakhs Forty Eight Thousand only). The enhanced compensation is apportioned as under: 'Rs.1,00,000/- [Rupees One Lakh only] to the 1st claimant; Rs.80,000/- (Rupees Eighty Thousands only) each to the claimants 2 to 4; and Rs.58,400/- [Rupees Fifty Eight Thousands And Four Hundreds only] to the 5th claimant.' The 2nd respondent/insurance company is directed to deposit before the Tribunal, within two months from the date of the receipt of a copy of this judgment, the enhanced portion of compensation i.e., Rs.3,98,400/- (Rupees Three Lakhs Ninety Eight Thousands Four Hundred only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. The claimants shall pay as per the procedure, the deficit court fee on the difference compensation i.e., the amount awarded in excess of the

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[6] (2015) 4 SCC 434

amount claimed. On such deposit of the amount before the Tribunal, the 1st claimant is permitted to withdraw Rs.50,000/- from her share of compensation and her entire accrued proportionate interest besides costs awarded; claimants 2 to 4, on attaining majority and on getting themselves declared as majors as per procedure, are permitted to withdraw their respective shares of compensation with proportionate interests. The 5th claimant is also permitted to withdraw his share of compensation with proportionate interest. The balance compensation amount of the 1st claimant shall be invested in a fixed deposit in her name in a nationalised bank as per practice and procedure with auto renewal facility till it is released in her favour as per procedure.

Miscellaneous applications, if any, pending shall stand closed.

**M. SEETHARAMA MURTI, J**

19.02.2018
Vjl