THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 2887 of 2009

JUDGMENT:

This appeal is arising out of the order dated 28.07.2008 in O.P.No.533 of 2005 on the file of Motor Accidents Claims Tribunal (District Judge), at Nizamabad. The appellants filed petition O.P.No.533 of 2005 under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/- against respondents 1 and 2, on account of the death of Guntaka Suresh in a motor vehicle accident that occurred on 05.01.2005.

2. Brief facts of the case are that on 05.01.2005, the deceased Guntuka Suresh was driving the scooter bearing No.AP-25J-5621 and one Chintha Harish was travelling as pillion rider. When they reached Perkit village outskirts on NH-7 road, one lorry bearing No.HR-38H-9972 driven in a rash and negligent manner came in opposite direction at high speed on wrong side of the road and dashed against the scooter. The deceased fell down from the scooter and the lorry ran over him and Harish Kumar due to which both of them sustained multiple fractures and crush injuries. The deceased succumbed to injuries on the same day at 5:15 PM in the government hospital, Nizamabad. Harish Kumar died on the way to hospital.

3. The 1st respondent remained exparte, and the 2nd respondent filed written statement denying the allegations in the petition and also the liability. They also disputed the quantum of compensation.

4. The Tribunal, on consideration of the evidence of witnesses PWs.1 to 3 and the documents Exs.A1 to A8; and the evidence of RW.1; has

awarded compensation of Rs.5,35,000/- with interest at 7.5% per annum against the claim of petitioners of Rs.10,00,000/-. Aggrieved by the quantum of compensation, the claimants are before this Court.

5. The point for consideration in this matter is whether the compensation awarded by the Tribunal is inadequate.

6. Heard the arguments of learned counsel for the appellants-claimants. There is no representation on behalf of the respondent-insurance company.

7. This is an appeal filed by the claimants. The main dispute of the appellants is that the Tribunal has not taken into consideration the correct income of the deceased basing on Ex.A.7 – Income Certificate issued by the Tahsildar, Kammarpally. One Income Certificate – Ex.A.7 was issued by the Tahsildar, Kammarpally, and another Income Certificate – Ex.A.8 was issued by the Sarpanch of the Village. The Tribunal has rejected both the Certificates as the said Certificates do not contain the particulars about the nature of business that the deceased was doing and that the Tahsildar was not competent person to issue Income Certificate. The Tribunal without considering the Certificates has assessed the Notional Income of the deceased @ Rs.4,000/- per month, whereas the contention of the claimants is that the deceased was earning a sum of Rs.15,000/- per month on agriculture and Kirana business and contributing the same to the family.

8. As far as the dispute with regard to the income of the deceased is concerned, the deceased was running kirana shop and was also doing agricultural and earning Rs.15,000/- and contributing to his family. The appellants have examined PW.3, the Sarpanch of the village to prove the

income of the deceased. According to PW.3, the deceased was doing cloth, kirana business and agriculture, and was earning Rs.1,80,000/- per annum, and the Sarpanch has issued Ex.A8, income certificate. The Tribunal, placing reliance on G.O.Ms.No.276 dated 13.07.2002 of Panchayat Raj and Rural Development (MDL.II) Department, held that the Sarpanch was not competent to issue income certificate, Ex.A8 was not taken into consideration. Ex.A7 is another income certificate issued by the Tahsildar, Kammarpally, showing that the deceased was earning Rs.1,80,000/- per annum on agriculture and kirana and clothes business. The certificate was not considered by the Tribunal as it does not contain details of business licence, Survey numbers of the lands cultivated by the deceased, Ex.A7 was disbelieved. The Tribunal disbelieving Exs.A7 and A8 issued by the Revenue officials, has notionally assessed the income of the deceased as Rs.4,000/ per month. In fact, Ex.A7 is the income certificate issued by the Tahsildar, Kammarpally showing that the deceased was earning Rs.1,80,000/- per annum on agricultural, Kirana, and cloth business. The Tahsildar is a Revenue official and a public servant. The Tribunal without there being any other evidence with regard to the disproof of the Certificates has simply rejected them and assessed the notional income. It is seen from the Certificates that the deceased was doing some kind of business and earning some income. The certificate is the assessment made by the Tahsildar basing on the information available with him. Generally, the Tahsildar is competent person to issue income certificates. There is no dispute raised by the other side that the certificate Ex.A7 issued by the Tahsildar is false and fabricated certificate. Ex.A8 income certificate issued by the Sarpanch was also rejected by the Tribunal on the ground that the Sarpanch was not competent to issue such certificate. However, in the facts and circumstances of the case, it is obvious that the deceased was doing some business in kirana and cloth, and he was also doing agriculture. At least considering the said fact, the Tribunal ought to have taken the notional income of the deceased as that of a skilled labourer.

9. In the light of the judgment rendered by the Hon' ble Apex Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company Limited**[1]**,** wherein the notional income of vegetable vendor was taken as Rs.6,500/- per month, considering him as a skilled labourer. In the instant case, considering the fact that the two income certificates Exs.A7 and A8 available on record, issued by the revenue officials Sarpanch and Tahsildar concerned, the notional income of the deceased would have been taken at least Rs.6,500/- per month.

10. Therefore, the notional income of the deceased can be taken as Rs.6,500/- per month. The future prospects of the deceased were also not considered by the Tribunal. The deceased was 20 years old by the date of accident and, therefore, he is entitled for future prospects at 40% on his notional income as per the judgment of the Hon' ble Apex Court in **National Insurance Company Limited v. Pranay Sethi**[2]. Considering the judgment in **Pranay Sethi**, the notional income of the deceased would be Rs.6500 + 40% of Rs.6500, which comes to Rs.9,100/-. Therefore, the annual income of the deceased would come to Rs.9100 x 12 = Rs.1,09,200. Since the deceased was unmarried, deducting 1/2 towards personal expenses, the contribution of the deceased to his family would come to Rs.54,600/-.

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[1] (2014) 2 SCC 735
[2] (2017) ACJ 2700

11. In fact, the Tribunal has taken the age of the mother for assessing loss of earnings and the dependency.There is dispute with regard to the age of the mother of the deceased. As per the petition averments, the mother of the deceased was aged about 38 years by the date of accident, whereas the Tribunal has taken the age of the 2nd petitioner-mother as 41 years. In fact, in a case of death of a bachelor, the age of the deceased has to be taken into consideration. The deceased was aged 20 years by the date of accident and, therefore, the multiplier applicable to his age is '18', as per the decision in **Sarla Verma**. Therefore, the loss of dependency would come to Rs.54600 x 18 = Rs.9,82,800/-.

12. Apart from the loss of dependency, the Tribunal has awarded a sum of Rs.5,000/- towards transport charges and funeral expenses of the deceased, and Rs.50,000/- towards love and affection. In the light of the ratio laid down in **Pranay Sethi**, the legal representatives of the deceased are entitled for Rs.70,000/- towards the above conventional charges. Therefore, the amount of Rs.55,000/- (Rs.5,000/- towards transport charges and funeral expenses and Rs.50,000/- towards love and affection) awarded by the Tribunal is enhanced to Rs.70,000/- towards conventional charges.

13. The appellants are entitled for just and reasonable compensation. In the light of the .decision in **Oriental Insurance Company Ltd. v. Nanjappan[3],** the Tribunal can award compensation more than the claim of the petitioners, if it is just and reasonable. In the instant case, it is a death of a 20 years old boy, who was the bread winner of the family by doing many works.

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[3] (2004) 13 SCC 224

14. Therefore, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S.No	Head	Compensation awarded by Tribunal	Compensation enhanced
1.	Loss of dependency	Rs.4,80,000	Rs.9,82,800
2.	Conventional charges (Transport, Funeral expenses, Pain & Love and affection)	Rs.55,000	Rs.70,000
	Total	**Rs.5,35,000**	**Rs.10,52,800**

15. **IN THE RESULT**, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.5,35,000/- to Rs.10,52,800/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The appellants-claimants are directed to pay Court fee on the compensation awarded over and above the compensation claimed in the original petition O.P.No.533 of 2005 within two months from the date of receipt of a copy of this order. The respondent-Insurance company is directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are permitted to withdraw the compensation amount as per the apportionment made and directions of the Tribunal. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

16.11.2018.

KSM / Msr

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 2887 of 2009

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KSM