

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.27 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 06.10.2010 passed in M.V.O.P.No.76 of 2008 by the Chairperson, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Warangal, granting compensation of Rs.6,94,000/- as against the claim of Rs.10,00,000/-.

Brief facts of the case are that on 19.04.2007 at about 9.30 a.m. while the deceased Challa Surender Reddy, who is the husband of the first claimant son of claimants 2 and 3, was going to Venkatapur from Bhupalpelly on Hero Honda Splendor motor cycle bearing No.AP-36Z-8444 along with his junior paternal uncle Ch.Ramchandra Reddy and when they reached the outskirts of Bhupalpelli Village, one Tractor bearing No.AP-36-T/R-5466 came at high speed and dashed the motor cycle, due to which, Surender Reddy sustained severe injuries on his head and other parts of body and died on the spot. The appellants-claimants filed claim petition alleging that the accident was occurred due to rash and negligent driving of the driver of the tractor and claimed Rs.10,00,000/- towards compensation under various heads.

The second respondent-Insurance Company filed counter affidavit denying all averments of the claim petition and alleging contributory negligence on the part of the deceased in driving the motor cycle.

Based on the pleadings of both the parties, the Tribunal framed the following issues:

- 1) Whether the accident took place on account of rash and negligent driving of the Tractor bearing No.AP 36 T/R A 5466 by its rider?
- 2) What was the age and income of the deceased by the date of his death?
- 3) Whether the petitioners are entitled to receive any compensation? If so, to what amount and from whom?

4) To what relief?

In support of the claim of the appellants, the wife of the deceased i.e. the first claimant was examined as P.W.1, eye witness to the accident by name J.Kumar @ Komuraiah was examined as P.W.2 and one N.Narasimha Reddy was examined as P.W.3 and Exs.A.1 to A.7 were got marked. R.W.1 was examined on behalf of the second respondent- Insurance Company and Exs.B.1 and B.2 were marked.

Based on the said evidence, the Tribunal came to the conclusion that the deceased died in the accident occurred on 19.04.2007 due to rash and negligent driving of the driver of the tractor, which was insured with the second respondent. The Tribunal considered the notional income of the deceased as Rs.5,000/- per month and thereby arrived the annual income of the deceased at Rs.60,000/- and after deducting 1/3rd towards his personal expenses, the Tribunal came to the conclusion that the deceased used to contribute Rs.40,000/- per annum for maintenance of the claimants. The Tribunal calculated the total loss of dependency at Rs.6,80,000/- by applying the multiplier of '17' as the deceased was aged 30 years at the time of his death. That apart, the Tribunal while rejecting the claim of the appellants for future prospects, has awarded Rs.2,000/- towards funeral expenses, Rs.2,000/- towards transportation, Rs.10,000/- towards loss of consortium. Thus, the Tribunal granted a total compensation of Rs.6,94,000/- to the claimants along with interest @ 6% per annum from the date of petition till the date of realization with proportionate costs. Seeking enhancement of the compensation awarded by the Tribunal, the present appeal came to be filed by the claimants.

Heard both sides and perused the material on record.

Learned counsel for the appellants would contend that the claimants are entitled for 40% of income towards loss of future prospects and they are also entitled for Rs.70,000/- under conventional heads as

per the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***¹.

Learned counsel for the 2nd respondent-Insurance Company would contend that the Tribunal holding that the deceased was not a permanent employee, refused to grant any amounts towards future prospects. Hence, there is no irregularity or illegality in the impugned award warranting interference of this Court.

As rightly contended by the learned counsel for the appellants, in view of the ratio laid down by the Hon'ble Supreme Court in ***Pranay Sethi case (1 supra)***, the appellants are entitled for a sum of Rs.70,000/- under conventional heads as against the amount awarded by the Tribunal of Rs.14,000/-. Further, as seen from the evidence on record, P.W.3 who is the partner of the deceased deposed that himself and the deceased jointly purchased a lorry and by running the lorry they used to get Rs.20,000/- per month jointly and after excluding the expenses the deceased used to Rs.8,000/- towards salary. Further, Ex.A.6 is the driving license of the deceased which shows that the deceased was having license to drive a heavy goods transport vehicle till 13.05.2007. However, based on the G.O. issued by the Government dated 26.10.2000 that minimum basic wages for heavy vehicle driver was fixed at Rs.5,138/- the Tribunal fixed the income of the deceased at Rs.5,000/-. Since the deceased owns a lorry and used to earn by driving the same, this Court is of the view that as per the ratio laid down in ***Pranay Sethi Case (1 supra)***, 40% of amount can be added to the income of the deceased towards future prospects, which comes to Rs.2,72,000/- (Rs.6,80,000/- X 40%). As regards contributory negligence pleaded by the Insurance Company, this Court is of the view that the Tribunal based on the evidence available before it i.e. oral evidence of P.W.2 who is the eye witness to the incident and Exs.A.2-Inquest Report and Ex.A.4 Post Mortem report, held that the accident

¹ 2017(6) ALD 170 (SC)

was occurred only due to rash and negligent driving of the driver of the tractor. In the absence of any contra evidence produced by the respondents, this Court finds no reason to interfere with the conclusions arrived by the Tribunal in this regard. Hence, the compensation awarded by the Tribunal of Rs.6,94,000/- is hereby enhanced to Rs.10,22,000/- towards compensation with interest @ 7.5% per annum from the date of filing of the petition till the date of realization.

Though the compensation claimed by the claimants before the Tribunal was only Rs.10,00,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***², in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.10,22,000/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.22,000/-. 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 within a period of two months from the date of receipt of a copy of this order. On such deposit, the 1st claimant-wife of the deceased is entitled to withdraw Rs.6,22,000/- and the 2nd and 3rd claimants being the parents of the deceased are entitled to withdraw Rs.2,00,000/- each along with proportionate interest and costs.

Accordingly, the appeal is allowed as stated supra.

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

(M.GANGA RAO, J)

07.09.2018
sur

² (2003) 2 SCC 274