**HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**M.A.C.M.A. No.2877 of 2009**
**And**
**Cross-objections (SR).No.27630 of 2009**

**COMMON JUDGMENT :**

Aggrieved by the order and decree dated 27.10.2007 in O.P.No.175 of 2006 passed by the Motor Vehicles Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad, awarding compensation of Rs.9,82,348/- with interest @ 7.5% per annum, as against the claim of Rs.25,00,000/- made by the claim petitioners for the death of the deceased – Mocherla Phani Praveen Kumar in a motor accident that took place on 19.02.2006, at Trimulgherry, Secunderabad, while the appellant – A.P. State Road Transport Corporation (for brevity "the Corporation") has filed appeal in MACMA.No.2877 of 2009, contending that the compensation awarded by the Tribunal is highly excessive and exorbitant, the claim petitioners have filed Cross-objections in X-Obj(SR).No.27630 of 2009 contending that the compensation awarded by the Tribunal is very low.

The brief facts of the case are that, on 19.02.2006 while the deceased along with his colleague was returning to his house from the office on a Two-Wheeler, when they reached near Foot Ball Ground, Opp: to Darga, Trimulgherry, Secunderabad, at about 4-15 a.m., one RTC Bus bearing

No.AP 11Z 5368 of Karimnagar-I Depot belonging to the appellant – Corporation, driven by its driver in a rash and negligent manner at high speed, dashed the Two-Wheeler, due to which the deceased and his colleague – Santosh fell down, their hands were crushed and they died on the spot. The impact of the accident was such that the Two-Wheeler went under the Bus from the front side and the Two-Wheeler was dragged by the Bus for 200 yards. Due to the accident, the petrol started leaking from the tank of the Two-Wheeler and the fuel caught fire due to the friction and the vehicle burst into flames, which also engulfed the RTC Bus and the Bus was completely burnt. The police of Trimulgherry Police Station registered a case in Crime No.31/2006 under Section 304-A of IPC against the driver of the Bus.

The deceased was aged 24 years by the date of accident and he was working in Swift Response Private Limited and earning Rs.12,650/- per month and contributing his income to the family. On account of the death of the deceased, the claim petitioners, who are parents and younger brother of the deceased, made a claim of Rs.25,00,000/- towards compensation against the respondent – Corporation. The respondent – Corporation filed counter denying the rash and negligent driving on the part of the driver of the RTC Bus. It is also stated that the compensation claimed by the claim petitioners is highly excessive and exorbitant. On consideration of the evidence of witnesses PWs.1 to 4 and the documents under Exs.A.1 to A.9 adduced on behalf of the claim petitioners, and also the evidence of RW.1 adduced on behalf of the appellant – Corporation, the Tribunal has awarded a compensation of Rs.9,82,348/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of deposit with a direction to the appellant – Corporation to deposit compensation amount within one month.

Heard the arguments of Sri Kambham Madhava Reddy, learned Standing Counsel for the appellant-Corporation. Though Sri S. Surender Reddy, learned counsel, submits that he has given up his vakalat for cross-objectors/claim petitioners on 30.01.2015 itself, none appears for the cross-objectors/claim petitioners till date. Perused the impugned order, including the material on record.

The point for consideration in this appeal is, whether the compensation awarded by the Tribunal is excessive?

Learned Standing Counsel for the appellant-Corporation mainly submitted two grounds; *firstly*, that the accident did not occur due to the negligence on the part of the driver of the Bus. It is submitted that the testimony of RW.1, who is the driver of the Bus, reveals that there is no negligence on his part.

In this regard, a perusal of the impugned judgment of the Tribunal reveals that RW.1 has stated that the motor cycle hit the Hitech Bus in the front middle portion and went underneath the Bus, due to which the motorcycle and pillion rider got injured and died on the spot. In his cross-examination, RW.1 admitted that there was no traffic on the road at that point of time and there was a curve at the place of accident. The Tribunal also observed that since the police registered a case under Section 304-A IPC against RW.1 and charge sheet has been filed stating that the accident occurred due to the rash and negligent driving by the driver of the RTC Bus and that the Two-Wheeler was dragged upto 200 yards from the place of accident and that the departmental enquiry was also ordered against the driver of the Bus, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the Bus. Therefore, there are no reasons to interfere with the findings of the Tribunal as far as the negligence on the part of the driver of the Bus is concerned.

The second submission advanced by the learned Standing Counsel on behalf of the appellant-Corporation is that the compensation awarded by the Tribunal is highly excessive and exorbitant. It is submitted that Ex.P.9 – Salary Certificate is not proved. PW.4 is not the competent witness to speak about the genuineness of Ex.P-9 - Salary Certificate, as he was not the person, who has issued the said Certificate.

In this regard, the findings of the Tribunal are that the petitioners have filed Ex.P.9 – Salary Certificate, Ex.A.12 – Bank Statement and examined PW.4, Coordinator of Human Resources in Aegis BPO Services Limited to prove Ex.A.9 – Salary Certificate. PW.4 in his evidence deposed that the deceased worked in their Organisation from February, 2004 till 17.02.2006 and his last annual salary was Rs.1,51,800/-. In the cross-examination, PW.4 has clarified that the salary would be paid through account payee cheque to the employees, but he did not say whether there was any practice to issue any acknowledgement by the employee after receipt of salary from the company through the Bank.

As per the findings of the Tribunal, the deceased was drawing a salary of Rs.1,51,800/- per annum. The said finding was based on the document Ex.A.9 – Salary Certificate and Ex.A.12 – Bank Statement of the deceased. PW.4 - Coordinator of Human Resources in Aegis BPO Services Limited has been examined to prove Ex.A.9 – Salary Certificate. He also deposed to the effect that the deceased worked in their Organisation from February, 2004 till 17.02.2006 and his last annual salary drawn was Rs.1,51,800/-. The Tribunal, having observed so, has taken the annual salary of the deceased as Rs.1,46,112/- by considering the evidence of PW.4 and contents of Ex.A.9. Therefore, there are no reasons to interfere with the findings of the Tribunal in considering the income of the deceased as Rs.1,46,112/-.

As regards the contention of the learned Standing Counsel for the appellant that PW.4 was not competent person to speak about Ex.A.9 – Salary Certificate, the Tribunal has clarified the competency of PW.4 to give evidence in respect of Ex.A.9. Ex.A.11 is the authorization letter given by the company authorizing PW.4 to give evidence before the Tribunal to prove Ex.A.9. PW.4, in his cross-examination, has stated that Ex.A.9 – Salary Certificate was issued by their company, signed by Mr. Vikram Bathija, H.R. Centre Head. As he was unable to move from the company, PW.4 was deputed to give evidence on his behalf. In this regard, the Tribunal has arrived at a proper and reasonable conclusion that PW.4 was authorized to depose in respect of Ex.A.9. Therefore, there is no force in the contention advanced by the learned Standing Counsel for the appellant disputing the competency of PW.4 to give evidence.

In view of the above, there are no valid grounds to consider the request of the appellant for reducing the compensation awarded by the Tribunal basing on Ex.A.9 – Salary Certificate of the deceased issued by the company.

None appeared for cross-objectors/claim petitioners after Mr. S. Surender Reddy, learned counsel, having been given up his vakalat. A perusal of the Grounds of Cross-objections reveal, *firstly*; that claim was made towards future prospects of the earnings of the deceased, which was not considered by the Tribunal; *secondly*; as the deceased was a bachelor, instead of taking the age of the deceased for the purpose of calculation of 'loss of earnings', the Tribunal has taken the age of the mother of the deceased. In fact, the Tribunal has deducted 40% from the total income towards personal expenses of the deceased, whereas in the light of the judgment of the Apex Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[1], 50% of total income has to be deducted towards personal expenses of the deceased. Para-26 of the said judgment, which reads as follows:

> "26. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was a married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims under Section 163A of the Motor Vehicles Act, 1988 (`MV

[1] (2009) 6 SCC 121

> Act' for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline."

Further, in NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI[2], the Apex Court held as under:

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
>
> (i) to (iii) .............
>
> (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
>
> (v) to (viii) ......"

Therefore, keeping in view the age of the deceased, who was aged about 24 years by the date of accident, in the light of the ratio laid down in PRANAY SETHI's case (2 supra), the cross-objectors/claim petitioners are entitled for 'future prospects' at 40% of the annual income of the deceased, which comes to Rs.2,04,556/- (Rs.1,46,112/- + Rs.58,444/- = Rs.2,04,556/-).

As per the decision in SARLA VERMA's case (1 supra), if 50% is deducted from the total income towards personal expenses of the deceased, instead of 40% as was taken by the Tribunal, it comes to Rs.1,02,278/- (Rs.2,04,556/- x 50/100

[2] 2017 SCC OnLine SC 1270

= Rs.1,02,278/-). When the same is multiplied by the appropriate multiplier '18' for the age group of the deceased, who was a bachelor aged about 24 years, the loss of dependency comes to Rs.18,41,004/- (Rs.1,02,278/- x 18 = Rs.18,41,004/-).

Further, the Tribunal has awarded Rs.2,000/- towards funeral expenses, Rs.1,000/- towards transport charges, and Rs.15,000/- towards loss of estate to the claim petitioners. However, as per the decision in PRANAY SETHI's case (2 supra), though 'conventional charges' were fixed at Rs.70,000/-, since the deceased is a bachelor, the cross-objectors/claim petitioners are entitled for a sum of Rs.30,000/- towards 'conventional charges', which includes love and affection, funeral charges, transport charges etc. Thus, the cross-objectors/claim petitioners are entitled for a total compensation of Rs.18,71,004/- (Rs.18,41,004/- + Rs.30,000/- = Rs.18,71,004/-).

Accordingly, while dismissing the MACMA.No.2877 of 2009 filed by the appellant-Corporation, the Cross-objections in X-Obj(SR).No.27630 of 2009 filed by the claim petitioners are allowed in part enhancing the compensation from Rs.9,82,348/- to Rs.18,71,004/- (Rupees eighteen lakhs seventy one thousand and four only) with proportionate costs and interest @ 7.5% per annum from the date of petition till realization. The appellant - Corporation is directed to deposit the entire amount of compensation within one month from the date of receipt of a copy of this judgment. On such deposit, the cross-objectors/claim petitioners are permitted to withdraw their share of compensation amount as apportioned by the Tribunal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

31.07.2018.
Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.2877 of 2009
And
Cross-objections (SR).No.27630 of 2009

31.07.2018
Msr