THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

**C.M.A.No.4248 of 2004**
**&**
**Cross-Objections(Sr).No.38957 of 2006**

**COMMON JUDGMENT:**

This appeal, under Section 173 of the Motor Vehicles Act, 1988, ('the Act' for short), is filed by the 2nd respondent insurance company assailing the common order/award, dated 15.06.2004, of the learned Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Ranga Reddy at L.B. Nagar, Hyderabad, insofar as it related to OP.No.438 of 2000.

**1.1** At the outset, it may be noted that the instant appeal is filed contending that the quantum of compensation awarded to the claimants is high and excessive and is without any basis and that the pleaded accident resulting in the death of the deceased occurred due to the sole rash and negligent driving of the rider of the scooter and not due to the sole rash and negligent driving of the driver of the lorry involved in the accident and that the Tribunal erred in fastening the liability on the insurance company with which the lorry was insured and in awarding huge compensation to the claimants.

**1.2** Be it also noted that the claimants filed cross objections having not been satisfied with the quantum of compensation awarded by the Tribunal and the finding that the claimants are entitled to interest on the compensation amount from the date of the Award instead of from the date of the claim petition.

**2.** I have heard the submissions of Sri Naresh Byrapaneni, learned counsel representing Sri E. Venugopal Reddy, learned counsel for the appellant/2nd respondent-insurance company; and of Sri Chandra Sekhar Reddy, learned counsel for the respondents 1 to 7/claimants/cross-objectors. The 8th respondent in the appeal and the 1st respondent in the cross objections is the owner-cum-insured of the lorry involved in the subject accident. The said respondent remained *ex parte* before the Tribunal. This Court is of the considered view that this appeal can be heard and disposed of on merits though the owner-cum-insured of the lorry is not served with notice in this appeal, since the insurance company is disputing the finding of the Tribunal that the accident had taken place due to the rash and negligent driving of the lorry and is in a way supporting the case of the owner-cum-insured of the lorry by stating that the rider of the scooter was responsible for the accident.

**3.** The parties in this matter hereinafter be referred to as the petitioners-claimants and the 2nd respondent-insurance company as arraigned in the claim petition for convenience and clarity.

**4.** The introductory facts are as follows:

The claimants herein, who are the legal heirs of the deceased, filed the instant claim petition claiming compensation for the loss sustained by them on account of the untimely death of the deceased due to the injuries sustained by him in the subject accident. Further, the son of the deceased filed the other connected OP.No.411 of 2000 claiming compensation for the injuries sustained and disability suffered on account of his involvement in the subject accident. Both the said OPs are resisted by the 2nd respondent insurance company by filing counter. The owner-cum-insured of the lorry that was involved in the accident remained *ex parte*. At common trial held in both the OPs, the 1st claimant herein, who is the wife of the deceased; and, the son of the deceased, who sustained injuries in the subject accident, were examined as

PWs1 & 2 and exhibits A1 to A10 were marked on the side of the claimants. No oral evidence was adduced on the side of the insurance company; however, copy of insurance policy was marked as exhibit B1. On merits and by the common Award, the Tribunal partly allowed both the O.Ps. In the OP of the son of the deceased, a compensation of Rs.25,477/- was awarded. No appeal was preferred either by the claimant or the insurance company assailing that part of the common award. In the present OP, the Tribunal awarded a total compensation of Rs.8,26,846/- with interest at 9% per annum from the date of the Award till date of deposit and fastened joint and several liability on the insured and the insurance company to pay the said compensation to the claimants. Aggrieved thereof, the insurance company preferred this appeal and the claimants also preferred cross objections.

**5.** In view of the two principal issues that are raised with regard to the justness and reasonableness of compensation awarded and the non liability of the owner-cum-insured and insurer of the lorry to pay the compensation, if any, awardable to the claimants on the plea that the accident was not due to the rash and negligent driving of the driver of the said lorry, the points that arise for determination are:

> **1. Whether the pleaded accident resulting in the death of the deceased occurred due to the sole rash and negligent driving of the rider of the scooter and not due to the sole rash and negligent driving of the driver of the lorry involved in the accident as being contended by the appellant-insurance company?**
>
> 2. **Whether the pleaded accident occurred due to the contributory negligence of the drivers of both the vehicles involved**

**in the accident as being alternatively contended by the appellant-insurance company?**

3. **Whether the compensation awarded by the Tribunal is not reasonable, just and fair in the facts and circumstances of the matter? And, if so, what shall be the reasonable, just and fair compensation to be awarded to the claimants?**

4. **To what relief?**

**6.** POINT Nos.1 & 2:

**6.1** The case of the claimants related to the issue, in brief, is as follows:

On 16.02.2000, at about 15:30 hours, the deceased Mohammad Yousuf Ahamad, along with his son, who is the injured claimant in the connected OP.No.411 of 2004, proceeded on a scooter bearing registration no.AAT 2084 towards Ghatkesar/Uppal side. On the way, when the Scooter reached a place near Changicherla X Roads, outskirts of Mediapally village, a lorry bearing registration No.AAT 6130 being driven by its driver at a high speed and in a rash and negligent manner came from the opposite side and dashed the scooter on which the deceased and his son were travelling. On that they both fell down and sustained injuries. The deceased succumbed to the injuries while receiving treatment in Gandhi hospital, Secunderabad. His son sustained fracture of bones of right leg besides grievous injuries all over the body.

**6.2** The case of the insurance company is as follows:

The accident was due to a head on collision. The manner and method of accident as narrated in the claim petition is not admitted. The claimants are put to strict proof of the same. The driver of the lorry drove the vehicle at a high speed and in a rash and negligent manner and dashed the scooter from the opposite side is not admitted. The insurance company is not aware of the registration of the case in Crime No.45 of 2000 by the Station House Officer, Uppal Police Station for the offence punishable under Section 337 of IPC against the driver of the lorry. The narration of the accident clearly shows that the deceased did not observe traffic rules while driving the scooter. As the driver of the lorry was not responsible for the accident, the insurance company is not liable to pay any compensation.

**6.3** At the hearing, learned counsel for the insurance company contended as follows: - 'The accident was a result of rash and negligent driving of the scooter by its rider. The Tribunal erred in giving a finding that the accident was due to sole rash and negligent driving of the driver of the lorry. The manner and method of accident clearly show that the rider of the scooter, that is, the deceased was solely responsible for the accident. In any view of the matter, since the accident had occurred due to head on collision of the two vehicles, the Tribunal ought to have held that the accident was due to contributory negligence of the drivers of both the vehicles and ought to have restricted the liability of the insurance company to pay the compensation to the extent of the negligence of the driver of the lorry which contributed to the accident.'

**6.4** Per contra, learned counsel for the claimants-cross objectors contended as follows: - 'The manner and method of accident pleaded by the petitioners would show that the accident had occurred only due to the sole rash and negligent driving of the driver of the lorry. Immediately after the accident a case in crime no.45 of 2000 was registered. After investigation, police filed a charge sheet against the driver of the lorry as he was alone responsible for the accident by his rash and negligent driving. The said facts are evident from exhibits A1 and A3, copies of FIR and charge sheet. PW2, who is the son of the deceased and who also travelled on the scooter along with the deceased at the time of accident, categorically deposed that the lorry had over taken a stationed oil tanker and then dashed the scooter. Further, the insurance company has not adduced any evidence in rebuttal to substantiate its plea that the accident was either due to the sole rash and negligent driving of the rider of the scooter or due to contributory negligence of both the drivers of vehicles involved in the accident. Therefore, the Tribunal having appreciated the evidence correctly recorded a finding that the driver of the lorry was solely responsible for accident. The said finding does not call for any interference in the facts and circumstances of the case. Further, the plea of contributory negligence is not raised in the counter of the insurance company. The said plea is not open to the insurance company in this appeal.

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

**8.** At the time of accident, the deceased and his son travelled on the scooter involved in the accident is not in dispute. The facts that in the said accident, the son of the deceased sustained injuries; and, that his claim petition was jointly tried with the instant claim petition and that both the claim petitions were disposed of by the common award are also not in dispute. During course of trial, the injured/the son of the deceased was examined as PW2. He categorically deposed about the pleaded accident and maintained his stand in his cross examination. In his evidence, he testified that the lorry had overtaken a stationary tanker lorry and then dashed the scooter. Therefore, from his testimony it is evident that the lorry dashed the scooter after over taking a stationary vehicle. Police investigation also revealed that the driver of the lorry was solely responsible for the accident by his rash and negligent driving and, therefore, the police laid a charge sheet against the said driver is evident from Exhibit A3, the certified copy of the charge sheet. The insurance company has not examined either the driver of the lorry or any other eyewitness to substantiate its defence. Further, by the common award, the Tribunal awarded a compensation of Rs.25,000/- and odd to PW2, the injured claimant while partly allowing his OP.No.411 of 2000. While answering the common issue as regards the rash and negligent driving of the drivers of the vehicles involved in the accident, the Tribunal recorded a finding that the accident was due to the sole rash and negligent driving of the driver of the lorry. The insurance company has not challenged the said finding recorded by the Tribunal in the impugned common award insofar as it related to OP.No.411 of 2000 filed by the injured claimant-PW2. Therefore, the failure of the insurance company to challenge the said finding in the common award insofar as it related to claim petition of the injured son of the deceased estops it from assailing the finding that the accident was solely on account of the rash and negligent driving of the driver of the lorry as the other part of the award by which compensation is granted to the injured son of the deceased on the basis of the above said finding has become final and binding on the parties.

**8.** Now it is apt to refer to the latest decision in **Dinesh Kumar J alias DInesh J v. National Insurance Company Limited [**2018(1) SCC page 750] wherein the facts show that in the pleaded accident in that case a motor cycle and a mini lorry were involved; the Tribunal and the High Court found fault with the driver of the motor cycle for not producing the driving licence; though no evidence was produced by the insurer to support the plea that there was a contributory negligence on the part of the appellant, a finding of contributory negligence was recorded; a Division Bench of High Court placed a considerable degree of importance on the fact that there was no visible damage to the lorry but it was the motorcycle, which has suffered damage, and that there was no eyewitness also and held that the accident was due to contributory negligence; eventually, a deduction of 40% was made from out of the compensation awardable on the ground of contributory negligence. In the stated factual background, the Supreme Court having noted that no evidence was produced by the insurer in support of the plea that there was contributory negligence on the part of the appellant, agreed with the contention that the plea of contributory negligence was accepted by the Tribunal and the High Court purely on the basis of conjecture and without any evidence and held that there was contributory negligence on the part of the appellant is a finding without any basis.

**9.** In the light of the evidence brought on record by the claimants and in the absence of rebuttal evidence by the insurance company and the legal position obtaining, this Court holds that the contentions raised by the insurance company that the accident was either due to the sole rash and negligent driving of the rider of the scooter, that is, the deceased or alternatively due to the contributory negligence of drivers of both vehicles involved in the accident is devoid of merit and is liable to be rejected. The said defence is accordingly rejected and the points are answered against the insurance company.

**10. POINT No.3**

The case of the claimants on this point, in brief, is this: - 'The deceased was 43 years of age and used to work as a Teacher in Junior College viz., Sadasivapeta Government College, Medak District, and earn Rs.9,800/- per month at the time of his involvement in the subject accident. The 1st claimant is his wife; claimants 2 to 5 are his children; and, claimants 6 & 7 are his parents. Due to the sudden and premature death of the deceased on account of his involvement in the subject accident, the whole family is put to mental agony and financial disturbance. The claimants are entitled to a compensation of Rs.13,00,000/- with interest at 18% per annum from the date of filing of the petition till date of payment or realisation.'

**10.1** Per contra, the case of the insurance company is that the compensation claimed is high and excessive. The insurance company put the claimants to strict proof of their entitlement to the compensation claimed or any part thereof.

**11.** Learned counsel for the insurance company contended as follows:

The Tribunal erred in fixing the income of the deceased at Rs.9,336/- which is his gross salary. His net salary alone should have been taken into consideration while determining the compensation under the head 'loss of dependency'. The Tribunal ought to have determined the age of the deceased by summoning the date of birth certificate of the deceased from the authority concerned and ought to have exactly determined his age as well as the appropriate applicable multiplier.

**12.** The learned counsel for the claimants-cross objectors contended as follows: - 'The Tribunal correctly determined the salary of the deceased as only statutory deduction viz., income tax is deductible and no other deductions are permissible. The gross salary after such deduction but not the net salary shall be taken as the income of the deceased. The Tribunal was, therefore, correct in fixing the monthly salary of the deceased, who is a teacher in a Government institution. His salary certificate is also exhibited as exhibit A5. The Tribunal erred in not adding any further amount to the salary of the deceased towards future prospects. The Tribunal erroneously fixed the multiplier at 10.91 instead of fixing the multiplier 14 by following the ratio in the decision in **Sarala Verma v. Delhi Transport Corporation and another**[1] as the deceased was 44 years of age at the time of accident. The Tribunal erroneously deducted 1/3rd towards personal and living expenses of the deceased instead of deducting 1/5th from his annual income as the number of dependants is more than 6. The Tribunal awarded a meagre compensation amounts of Rs.10,000/- and Rs.2,000/- towards consortium and funeral expenses and failed to award any compensation under the heads 'loss of estate' and 'loss of love & affection and career guidance' for the children, particularly the claimants 4 & 5, who are minors at the time of accident. In any view of the matter, the claimants are entitled to more compensation than claimed. In view of the settled legal position, the Tribunal is empowered to award more compensation irrespective of the amount claimed by the claimants. The Tribunal grossly erred in awarding interest on compensation awarded from the date of the award instead of from the date of the claim petition. The compensation awarded is unjust & unfair and, therefore, needs upward revision. In any view of the matter, the

[1] 2009 ACJ 1298

Tribunal ought to have awarded the compensation of Rs.13.00 lakhs as claimed. The appeal of the insurance company may be dismissed; and, the cross objections may be allowed and just & fair compensation may be awarded.'

**13.** Dealing first with the compensation to be awarded under the head 'loss of dependency', it is necessary to note that the claimants claimed that the deceased was of 43 years of age and used to work as a Teacher in Junior College, Sadasivapeta Government College, Medak District, and earn Rs.9,800/- per month at the time of his involvement in the subject accident. PW1 testified that her husband was of 43 years of age at the time of death. In the inquest report, exhibit A2; and, post mortem report, exhibit A4, the age of the deceased was consistently mentioned as 44 years. Hence, the age of the deceased can safely be accepted as 44 years as on the date of his death. PW1, having deposed about the occupation and income of the deceased, exhibited exhibit A5-salary certificate. The same on a perusal shows that the gross salary of the deceased is Rs.9,336/-. The said salary was being claimed as the salary of the deceased. As per settled legal position, the salary after deduction towards income tax, if any, payable shall only be taken as the net salary of the deceased in view of the precedential guidance in **National Insurance Company Limited v. Pranay Sethi**[2]**,** wherein it was held that actual salary should be read as actual salary less tax**.** Therefore, the salary of the deceased is determined as Rs.9,000/- per month after taking into account the statutory deduction. The net annual income thus works out to Rs.1,08,000/- [Rs.9,000/- x 12]. Since the number of dependants is more than six, 1/5$^{th}$ is deductible towards personal

[2] 2017 ACJ 2700

and living expenses of the deceased. If so deducted, the balance annual income works out to Rs.86,400 [Rs.1,08,000/- - Rs.21,600/-]. To this, an addition of 30% is to be made towards future profits as the deceased had a permanent job and was between 40 & 50 years as on the date of his death. (See: **Pranay Sethi's** case supra). If so added, the annual income of the deceased works out to Rs.1,12,320/-[Rs.86,400/- + Rs.25,920/-]. Accordingly, the annual loss of dependency works to Rs.1,12,320/-. 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 `14' (fourteen). If the above multiplicand is multiplied by the said multiplier, the compensation under the head 'loss of dependency' works out to Rs.15,72,480/- [Rupees Fifteen Lakhs Seventy Two Thousands and Four Hundred and Eighty only]. The said sum is accordingly awarded.

**14.** Coming to the other amounts of compensation awarded by the Tribunal under the other heads, it is to be noted that the Tribunal had awarded Rs.10,000/- and Rs.2,000/- towards consortium and funeral expenses; but, did not specifically award any compensation under the heads 'loss of estate' and 'loss of love & affection and loss of career guidance' to the minor children. Following the guidance decision in **Pranay Sethi's** case, 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

[3] 2014 ACJ 1565 = 2014 (6) SCALE 55

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 claimants 4 & 5 are minors aged 14 & 10 years as on the date of the claim petition in the year 2000. Therefore, Rs.50,000/- is awarded under the head 'loss of love & affection and loss of career guidance'.

**15.** Accordingly, this Court holds that the claimants are entitled to the following compensation amounts:

| Sl. No. | Head of compensation | Amount (in Rs.) |
|---|---|---|
| (1) | Loss of dependency | 15,72,480-00 |
| (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 | 50,000-00 |
| | Total | 16,92,480 |

**(Rupees Sixteen Lakhs Ninety Two Thousand and Four Hundred and Eighty only)**

The claimants had claimed a compensation of Rs.13,00,000/-. The compensation as determined and awarded worked out to Rs.16,92,480/- 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.16,92,480/-. The enhanced compensation is Rs.8,65,634/- [Rs.16,92,480/- - Rs.8,26,846/-].

[4] (2013) 9 SCC 54
[5] AIR 2003 SC 674

In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts.

**16.** Dealing now with the aspect that the Tribunal did not award interest on the compensation amount from the date of the petition as it ought to award, it is trite to note that the Tribunal awarded interest on the amount awarded at 9% per annum simple from the date of the award only. As per settled law interest shall be awarded from the date of the claim petition and it is also the established practice and procedure. Coming to the rate of interest to be awarded on 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]. The learned counsel for the insurance company urged that in case interest is awarded from the date of the claim petition, it shall be at 7.5% in view of the guidance in the decisions of the Supreme Court. Accordingly, interest is awarded on the entire compensation amount awarded at the rate of 7.5% per annum simple from the date of the claim petition.

**16.1** As the insurance company's contention that the driver of the lorry was not solely responsible was negatived and as it did not dispute that the said lorry was insured with it and that the policy covers the risk of the deceased, it follows that the respondents 1 & 2 are jointly and severally liable to pay the compensation amount awarded to the claimants. The point is accordingly answered.

[6] (2015) 4 SCC 434

**17.** In the result, C.M.A.No.4248 of 2004 is dismissed, however, without costs; and Cross Obj(SR).No.38957 of 2006 is allowed with costs awarding a total compensation of Rs.16,92,480/- (Rupees Sixteen Lakhs Ninety Two Thousands and Four Hundred and Eighty only). The enhanced of compensation of Rs.8,65,634/- is apportioned amongst the claimants as under: 'Rs.2,00,000/- to the 1st claimant; Rs.1,00,000/- each to the claimants 2 & 3; Rs.1,75,000/- each to the claimants 4 & 5; Rs.50,000/- to the 6th claimant; and, Rs.65,634/- to the 7th 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.8,65,634/- 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, which carries interest at 7.5% per annum from the date of the claim petition as per this judgment, if not already paid or deposited 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 amount claimed. On such deposit of the amount before the Tribunal, the claimants 6 & 7 are permitted to withdraw their respective shares of compensation with respective proportionate interests on their shares; claimants 1 to 3 are permitted to withdraw 50% of their compensation amounts including accrued interests on their respective shares. The 1st claimant is also permitted to withdraw the costs awarded. Claimants 4 & 5 on getting themselves declared as majors as per procedure, are permitted to withdraw 50% of their compensation amounts including accrued interests on their respective shares. The balance 50% of compensation amounts of the claimants

1 to 5 shall be invested in five separate fixed deposits in their respective names in a nationalised bank as per practice and procedure with auto renewal facility till the said amounts are released in their favour by the Tribunal as per procedure.

Miscellaneous applications, if any, pending shall stand closed.

**M. SEETHARAMA MURTI, J**

05.03.2018
Vjl