THE HONOURABLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No.982 of 2011

JUDGMENT:

This appeal arises out of award, and decree, dated 27.07.2010, in O.P.No.2936 of 2008 on the file of learned IX Additional Chief Judge (Fast Track Court), City Civil Courts, at Hyderabad.

2. Appellant Nos.1 to 4/claimants are the wife, daughter, father and son of one R.Babu (hereinafter referred to as 'the deceased'), who died in a motor vehicle accident that occurred on 30.11.2008. They being the legal heirs of the deceased filed the O.P. under Section 166 of the Motor Vehicles Act, 1988, claiming a compensation of Rs.6,00,000/- for his death as against the respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle. Appellant No.5, who is the brother of the deceased, is brought on record as the legal heir of deceased appellant No.3.

3. The facts of the case in brief are that on the fateful day i.e., on 30.11.2008 at about 13.30 hours, while the deceased was proceeding on a Hero Honda Passion Plus bearing No.AP 29 J 2456 from Koheda towards Ibrahimpatnam side along with his mother – Smt.R.Sukkamma, as a pillion rider; when they

reached near Koheda X Road on Ibrahimpatnam road, a lorry/tipper bearing No.AP 29 TA 4380 (hereinafter referred to as 'the offending vehicle'), that was being driven on the wrong side of the road in a rash negligent manner came towards the motorcycle from its behind and hit it. Due to the said incident, the deceased and his mother fell to the ground and sustained multiple grievous injuries and died on the spot. The deceased died due to the fatal injury to the head. Having lost the breadwinner of their family, the claimants filed the O.P. mentioning the above mentioned facts.

Before the Tribunal, respondent No.1 remained *ex parte* and respondent No.2 filed a counter-affidavit denying its liability. The Tribunal, on appreciation of the oral and documentary evidence, awarded compensation of Rs.3,50,000/- with proportionate costs and interest at the rate of 9% per annum from the date of filing of the O.P. to till the date of realisation. Dissatisfied with the compensation so awarded by the Tribunal, the claimants, who are appellant Nos.1 to 4, along with appellant No.5 preferred the present appeal seeking enhancement of compensation.

4. Heard the learned counsel for the appellants and the learned standing counsel appearing for respondent No.2 – insurance company and perused the record.

5. The learned counsel for the appellants submits that the Tribunal, instead of granting the total compensation of Rs.6,00,000/- claimed by the appellants, has partly allowed the O.P. by awarding a meagre compensation amount of Rs.3,50,000/- without stating the amount awarded under each head; and that the Tribunal failed to appreciate the evidence available in the record in so far as the age and income of the deceased, where from it is clear that the income of the deceased was Rs.5,000/- per month.

6. The learned standing counsel appearing for respondent No.2 – the insurance company, submits that there is no basis for assessing the income of the deceased at Rs.5,000/- per month and that the compensation awarded by the Tribunal is on higher side.

7. A perusal of the award of the Tribunal shows that taking into consideration the oral evidence of P.W.1 – the wife of the deceased and P.W.2 – eyewitness and the documentary evidence – Exs.A-1 to A-5, the Tribunal though came to the

conclusion that the driver of the offending vehicle drove it in a rash and negligent manner with high speed, and he was responsible for occurrence of the accident, it did not give any finding regarding the age, income and the multiplier to be applied for assessing the compensation. The Tribunal, without specifying the amount awarded under each head, awarded a lumpsum compensation of Rs.3,50,000/-.

8. P.W.1 – the wife of the deceased, deposed in her chief-examination that the deceased was hale and healthy prior to his death and was aged about 30 years at the time of his death and was working as Kavalikar and was also doing real estate business, and was earning Rs.5,000/- per month. She further deposed that the deceased was only the breadwinner of their family. As per the ration card, the deceased was aged 25 years as on 07.10.2006, and that P.W.1 had not filed documents in proof of the income of the deceased.

9. P.W.2 – eyewitness, deposed that while the deceased and his mother were proceeding on their two wheeler in front of him, when they reached near Koheda X road, the offending vehicle came in a rash and negligent manner with high speed and hit the vehicle of the deceased from its behind and due to

the said impact, the deceased and the pillion rider sustained multiple injures and they died on the spot. In his cross-examination, P.W.2 deposed that he was not the relative of the deceased. He also denied the suggestion that he did not see the accident and was deposing falsely to help the family members of the deceased.

10. As regard to the age of the deceased, evidence of P.W.1 was crucial, and according to her, the deceased was 30 years old by the date of his death. Nothing was elicited in her cross-examination to discredit her testimony given in this regard. As the age of the deceased was 30 years, the appropriate multiplier to be applied was '17', as per **Sarla Verma v. Delhi Transport Corporation**[1].

11. As regards to the income of the deceased, P.W.1 deposed that the deceased was working as Kavalikar; and that he was also doing real estate business and earning Rs.5,000/- per month. In her cross-examination, she deposed that she had not filed any proof regarding the income of the deceased. As there was no documentary proof, the Tribunal ought to have taken the income of the deceased notionally, at least at Rs.100/- per

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[1] (2009) 6 SCC 121

day for the purpose of computation of compensation. If we take the case of a labourer working in an unorganised sector, minimum wage that can be paid to him will be Rs.100/- per day and per month, it comes to Rs.3,000/- and per year, it comes to Rs.36,000/- (3000 X 12). If 1/3rd of it is deducted towards his personal expenditure, contribution of his income to his family comes to Rs.24,000/- per annum. If the loss of income contribution of the deceased to his family amounting to Rs.24,000/- is multiplied by '17', the compensation which the appellants are entitled to get under the head of loss of income contribution of the deceased to his family comes to Rs.4,08,000/-.

12. The Tribunal has not awarded compensation to the appellants under the conventional heads, such as funeral expenditure, loss of estate and loss of consortium. As per the latest judgment rendered by the Apex Court in **National Insurance Company Limited v. Pranay Sethi**[2], the appellants are entitled to get reasonable sum of Rs.70,000/- under conventional heads *viz.*, loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenditure (Rs.15,000/-). Therefore, in addition to the compensation

[2] 2017 ACJ 2700 SC

which they are entitled to get under the head of loss of income contribution of the deceased to his family, they are entitled to Rs.70,000/- more towards compensation under conventional heads. In all, they are entitled to a compensation of Rs.4,78,000/-.

13. In the result, the appeal is partly allowed by enhancing the compensation from Rs.3,50,000/- to Rs.4,78,000/- (Rupees four lakhs and seventy-eight thousand only). The enhanced compensation shall be paid to them at 7.5% per annum from the date of filing of the O.P. to till realization and the costs thereon by the respondents, who are held liable jointly and severally to pay such amount.

14. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

26th December, 2018

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