

THE HON'BLE SRI JUSTICE M. GANGA RAO

M.A.C.M.A.No.435 of 2011

ORDER:

The appellants-claimants filed this appeal against the judgment and decree dated 18.9.2009 in OP.No.203 of 2008 on the file of the Motor Accidents Claims Tribunal-cum- VI Additional District Judge (FAC), Gooty, (for short 'the Tribunal') wherein and whereby the Tribunal granted *lump sum* amount of Rs.75,000/- in addition to Rs.4,000/- towards funeral expenses with interest at Rs.7.5% p.a. against the claim of Rs.2,00,000/- for the death of an eight years school going girl.

On 6.9.2004 at about 4.00 pm in front of Lakshmi Private Hospital, Gooty-Guntakal Road, one M.Rukmini, who is the daughter of the claimants, was proceeding along with her father and others, lorry bearing No.AP-21-T-3214, belonging to the 1st respondent and insured with the 2nd respondent, came in rash and negligent manner and dashed the said Rukmini, due to which, she sustained grievous injuries and she was shifted to Government General Hospital, Gooty, for treatment, where she died. The police registered Cr.No.151 of 2004 for the offence under Section 304-A of IPC. The deceased M.Rukmini was aged about 8 years, hale and healthy and studying 4th class. The petitioners claimed Rs.2,00,000/- as compensation for the death of their daughter, aged about 8 years, studying 4th class, due rash and negligent driving of the offending vehicle bearing No.AP-21-T-3214 which was insured with the 2nd respondent/Insurance Company. The 2nd respondent-insurance company filed counter denying the material averments

and denied their liability. They stated that the quantum of compensation as claimed is excessive.

Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether accident was occurred on 6.9.2004 due to rash and negligent driving of the Lorry Bearing No.AP-21-T-3314 by its driver and caused the death of the deceased?
- 2) Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondent?
- 3) To what relief or reliefs?

Before the Tribunal, the claimants got examined the 1st petitioner as PW.1 and got marked Exs.A1 to A6 in support of their claim. The 2nd respondent had not adduced any oral or documentary evidence.

The Tribunal having considered the evidence of PW.1 and Exs.A1 to A6, came to the conclusion that the accident occurred due to rash and negligent driving of the offending vehicle by its driver resulting in accident. The Tribunal observed that the 2nd respondent failed to adduce any oral or documentary evidence in support of its claim that there is no rash and negligent driving of the offending vehicle by its driver. The Tribunal, by applying the principle of *RES IPSO LOQUITUR* which was enunciated by the Hon'ble Supreme Court of India in its decision in the case of *BASTHI KASIM SAHEB (died) by LRs. v. Mysore State Road Transport Corporation*, [1991 ACJ 380 (SC)] came to the conclusion that the accident took place due to rash and negligent driving of the offending vehicle resulting the death of the deceased. But, with regard to issue no.2, the Tribunal observed that the petitioners got

marked Ex.A6 study certificate relating to the deceased given by Head Mistress, L.M. Boys Aided Elementary School, Gooty and the same will not clinch the issue in their favour. It was further observed that the deceased was aged about 8 years as evidenced by Ex.A2 and Ex.A3 certified Photostat copies of the inquest report and post mortem examination certificate and based on the same, the earning cannot be assessed and hence the Tribunal had taken *lump sum* of Rs.75,000/- in addition to Rs.4,000/- towards funeral expenses and granted total compensation of Rs.79,000/- with interest at 7.5%. The claimants being not satisfied with the amount granted by the Tribunal, filed the present appeal seeking enhancement of the compensation.

Learned counsel appearing for the appellants would contend that the Tribunal ought to have taken Rs.15,000/- as notional income of the deceased as per the judgment of the Hon'ble Supreme Court in *Manju Devi v. Musafir Paswan*¹. As the deceased was aged below 15 years, the multiplier applicable is '15' as per the judgment of Hon'ble Supreme Court in *Sarla Verma vs. Delhi Transport Corporation*². Thus, the loss of dependency would come to Rs.2,25,000/- (Rs.15,000 X 15). Further, the appellants are entitled for grant of Rs.20,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate in view of the ratio laid down by the Hon'ble Supreme Court in *National Insurance Co. Ltd., vs. Pranay Sethi and others*³. Learned counsel would further contend that the rate of interest at 9% p.a.

¹ 2005 ACJ 99 (SC)

² 2009 ACJ 1298 (SC)

³ 2017 ACJ 2700

may be granted as per the judgment in the case of *Puran Singh v. New India Assurance Company*⁴.

Ms.B.L.Prasanna, learned counsel appearing for the 2nd respondent would contend that the Tribunal granted fair and just compensation. The appellants-claimants are not entitled for enhancement of any amount, over and above the amount awarded by the Tribunal.

This Court finds that there is no merit in the contention of the learned counsel for the 2nd respondent. Considering the submission of the learned counsel for the appellants, this Court is of the considered view that taking the notional income of the child as Rs.15,000/- per annum by applying the multiplier of '15' as per the decision of the Hon'ble Supreme Court in *Sarla Verma (2 supra)*, as the age of the deceased is below 15 years, the appellants are entitled to Rs.2,25,000/- (Rs.15,000 x 15) towards loss of dependency. That apart, as per the judgment of the Hon'ble Supreme Court in *Pranay Sethi (3 supra)*, it would be just and reasonable to grant Rs.20,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, in total, the appellants are entitled for Rs.2,75,000/- towards compensation for the death of their child.

Though the compensation claimed by the claimants before the Tribunal was only Rs.2,00,000/-, in view of the decision of the Hon'ble Supreme Court in *Nagappa vs. Gurudayal Singh and others*⁵, in M.V.Act there is no restriction that the compensation

⁴ 2011 (14) SCC 481

⁵ (2003) 2 SCC 274

should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.2,75,000/- payable by both the respondents jointly and severally along with interest @ 9% per annum from the date of petition till the date of realization, as the rate of interest granted by the Tribunal @ 9% per annum could not be found fault with. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.75,000/-. Out of the total compensation of Rs.2,75,000/-, the first claimant-father of the deceased is entitled for Rs.1,25,000/- with costs and proportionate interest and the second claimant-mother of the deceased is entitled for Rs.1,50,000/- with proportionate interest. The entire compensation amount, duly giving credit to the amounts already deposited, if any, shall be deposited to the credit of the O.P. before the Tribunal within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are entitled to withdraw their respective share amounts, subject to payment of balance Court Fee.

The appeal is allowed to the extent indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. GANGA RAO, J

Date:14/09/2018

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