THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.400 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 19.11.2010 passed in M.V.O.P.No.256 of 2007 by the Chairperson, Motor Accidents Claims' Tribunal-cum-District Judge, Kadapa at Proddatur, granting compensation of Rs.1,22,500/- as against the claim of Rs.3,00,000/-.

Brief facts of the case are that on 20.12.2006 while the deceased Juturu Kiran, son of the appellants, was travelling along with two others in auto bearing No.AP04-U-6927 from Kommanapalli Village to Kamalapuram and when the auto reached near Papagini Bridge on Kamalapuram-Kadapa main road, lorry bearing No.AP04-V-2126 dashed the auto resulting in death of the deceased. The appellants-claimants filed claim petition alleging that the accident was occurred due to rash and negligent driving of the driver of the lorry belonging to the first respondent, at the time of accident the deceased was aged about 18 years, he was hale and healthy and used to earn Rs.150/- per day by doing coolie work and thereby claimed compensation of Rs.3,00,000/-. The second respondent-Insurance Company filed counter affidavit denying all averments of the claim petition. Based on the pleadings of both the parties, the Tribunal framed the following issues:

1) Whether the accident occurred on 20.12.2006 at about 2.30 a.m. due to rash and negligent driving of the driver of Lorry bearing No.AP-04-V-2126?
2) Whether the claimants are entitled for compensation?
3) To what relief?

In support of the claim of the appellants, the mother of the deceased i.e. the second claimant was examined as P.W.1 and Sri Shaik Mahaboob Basha was examined ad P.W.2 and Exs.A.1 to A.4 were got marked. R.W.1 was examined on behalf of the second respondent-Insurance Company, however, no documents ware marked. Based on the said evidence, the Tribunal came to the conclusion that the deceased died in the accident occurred on 20.12.2006 which occurred due to rash and negligent driving of the driver of lorry, which was insured with the second respondent and also held that there was contributory negligence on the part of the driver of the auto in which the deceased was travelling. The Tribunal considered the income of the deceased at Rs.75/- per day and thereby arrived the annual income of the deceased at Rs.27,000/- and after deducting 1/3rd towards his personal expenses, the Tribunal came to the conclusion that the deceased used to contribute Rs.18,600/- per annum for maintenance of the claimants. The Tribunal calculated the total loss of dependency at Rs.2,34,000/- by applying the multiplier of '13'. That apart, the Tribunal awarded Rs.5,000/- towards funeral expenses, Rs.5,000/- towards love and affection and Rs.1,000/- towards transportation. Thus, in total the compensation arrived by the Tribunal was Rs.2,45,000/-. However, in the view of finding of the Tribunal with regard to contributory negligence on the part of the driver of the auto in which the deceased was travelling, the Tribunal awarded compensation of Rs.1,22,500/- to the claimants. Aggrieved by the same, the present appeal came to be filed.

Learned counsel for the appellants would contend that the Tribunal erred in awarding only Rs.1,22,500/- as compensation holding that there was contributory negligence on the part of the auto driver, the Tribunal also erred in applying the multiplier of '13' basing on the age of the mother of deceased and the Tribunal ought to have applied the multiplier of '19' as the age of the deceased at the time of accident was '18'. The Tribunal ought to have taken the income of the deceased as Rs.4500/- per month as claimed by the petitioner. He would further contend that even though the evidence of PW.1 reveals that the deceased used to earn Rs.150/- per day, the Tribunal has taken only Rs.75/- per day. As per the decision of the Hon'ble Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance***

***Insurance Company Limited*[1]**, the income of the daily wage earner has to be taken at Rs.4,500/-. He would also contend that the Tribunal ought to have granted Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses. The Tribunal also erred in not granting any future prospects. 40% of annual income of the deceased has to be awarded by the Tribunal towards future prospects. The Tribunal grossly erred in holding that there is a contributory negligence without therebeing any legal evidence and in MVOP No.240/2007 arising out of the same accident, the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa, awarded full compensation to the claimants therein while rejecting the plea of the respondents as regards contributory negligence. Thus, he would contend that the appellants are entitled for enhanced compensation, as stated supra.

Heard both sides and perused the material on record.

As regards contributory negligence concluded by the Tribunal, only basing on Ex.A.4 charge sheet which discloses that the auto was involved in the said accident and the driver of the auto died on the spot along with the deceased, the Tribunal presumed that there was contributory negligence on the part of the driver of the auto who drove the vehicle. But, the Insurance Company failed to establish the contributory negligence by cross-examining P.W.2. Even though P.W.2 was cross-examined, no such evidence was elicited during his cross-examination. Hence, this Court is of the considered view that the Tribunal erred in holding that there was contributory negligence on the part of the driver of the auto in which the deceased was travelling at the time of the accident contrary to Ex.A.4 and without therebeing any legal evidence to that effect.

Having heard the rival contentions and perused the evidence available on record, this Court is of the view that the Tribunal ought to have taken the income of the deceased at Rs.4,500/- per month. Even

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[1] 2011 (6) ALT 48 (SC)

the Hon'ble Supreme Court in ***Ramachandrappa (1 supra)*** held the monthly earnings of coolie at Rs.4,500/-. The claim was honest and bonafied. There was no reason for the Tribunal to reduce the monthly earnings of the deceased from Rs.4,500/- to Rs.2,250/- per month and this Court accept the monthly earnings of the deceased at Rs.4,500/- i.e. at the rate of Rs.150/- per day as stated by P.W.1. After deducting 1/3rd there from towards personal expenses, the contribution of the deceased to his family would be Rs.36,000/- per annum. Further, as per the decision of the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Road Transport Corporation and another***[2], the multiplier applicable to the case on hand would be '19' as the deceased was aged about 18 years at the time of the accident. Hence, the loss of dependency would comes to Rs.6,84,000/- [Rs.36,000/- X 19]. In addition to loss of dependency, as per the ratio laid down in ***National Insurance Co. Ltd. Vs. Pranay Sethi***[3], the claimants are entitled for Rs.15,000/- towards of loss of estate and Rs.15,000/- towards funeral expenses. As per the decision of the Hon'ble Supreme Court in ***Pranay Sethi (3 supra)***, only self-employed and person on fixed wages alone are entitled for claim for loss of future prospects. As the deceased was a coolie, no amount could be granted under the head 'loss of future prospects'. Thus, in total the claimants are entitled for Rs.7,14,000/- towards compensation.

Though the compensation claimed by the claimants before the Tribunal was only Rs.3,00,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[4]**,** 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.7,14,000/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess

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[2] (2009) 6 SCC 121
[3] 2017(6) ALD 170 (SC)
[4] (2003) 2 SCC 274

amount of Rs.4,14,000/-. The rate of interest and apportionment ordered by the Tribunal holds good. The entire compensation amount, duly deducting the amount 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 appellants-claimants are entitled to withdraw their respective share amounts.

Accordingly, the appeal is allowed.

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

(M.GANGA RAO, J)

31.08.2018
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