

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.421 OF 2011

JUDGMENT:

Appellant-claimant filed this appeal against the award and decree dated 10.06.2009 passed in M.V.O.P.No.36 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kurnool at Adoni, granting compensation of Rs.95,000/- as against the claim of Rs.5,00,000/- for the death of the deceased-M.Viswanath Goud in the motor accident occurred on 30.09.2007.

The appellant, mother of the deceased, filed claim petition under Sections 140 and 166 of the Motor Vehicles Act stating that on 30.09.2007 at about 7.45 pm while the deceased was returning from Kurnool to Mantralayam in APSRTC Bus bearing No.AP-21-T-4194 and when the bus reached Palakurthy bus stage, one Tipper bearing No.AP-21T-4194 being driven by its driver in a rash and negligent manner dashed against the RTC bus, due to which, he sustained grievous injuries and succumbed to injuries while taking treatment at Kurnool on the same day at 11-30 p.m. Hence, she sought compensation of Rs.5,00,000/- stating that the deceased was aged 32 years and getting the income of Rs.1 lakh per annum by doing cell phone business.

Respondent No.1-owner of the Tipper filed counter denying the averments of the claim petition and further stating that the Tipper was insured with R.2 and the policy, which is a comprehensive policy, was in force by the time of accident.

Respondent No.2-Insurance Company filed counter denying the averments of the claim petition and specifically stating that the

driver of the Tipper was not having a valid driving license; R.1 violated the terms and conditions of the policy and as such R.2 is not liable to pay compensation. Hence, prayed to dismiss the claim petition.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident and the resultant death of M.Viswanath Goud had occurred due to the rash and negligent driving of the driver employed by Respondent No.1 on his Tipper bearing No.AP-21T-4194?
- 2) Whether the Petitioner is entitled to compensation, and if so, to what amount and from which of the Respondents?
- 3) To what relief the Petitioner is entitled to?

On behalf of the appellant, PWs 1 and 2 were examined and Exs.A.1 to A.10 were got marked. On behalf of the respondent, R.W.1 was examined and Ex.B.1-copy of Insurance Policy got marked.

The Tribunal based on the evidence of P.W.2-driver of the RTC bus and eye witness to the accident, who stated that on the date of accident, the driver of the Tipper drove the Tipper in a rash and negligent manner and dashed against the bus in opposite direction, due to which, the deceased sustained grievous injuries and died in the hospital while taking treatment in Kurnool hospital, and documents under Exs.A.1 and A.3, certified copies of FIR and Charge sheet, held that the accident in question was occurred due to the rash and negligent driving of the driver of the Tipper and thereby answered issue No.1 in favour of the appellant.

While assessing the quantum of compensation, the Tribunal disbelieved the evidence of P.W.1, mother of the deceased, who deposed that the deceased was getting Rs.1 lakh per annum by

doing cell phone business, in the absence of any supporting evidence, and thereby treated the deceased as a non-earning member of the family and took his notional income at Rs.15,000/- per annum. The Tribunal has deducted 1/3rd therefrom towards personal expenses and adopted the multiplier of '8' based on the age of the mother of the deceased and arrived the loss of dependency at Rs.80,000/-. That apart, the Tribunal has granted Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses and in all the Tribunal granted Rs.95,000/- towards compensation to the appellant payable by both the respondents jointly and severally along with costs and interest at 7.5% per annum from the date of petition till realization. Aggrieved by the quantum of compensation, the present appeal is filed by the appellant seeking enhancement.

Learned counsel for the appellant would contend that the Tribunal grossly erred in taking the notional income of the deceased as Rs.15,000/- ignoring the evidence of P.W.1 that the deceased used to earn Rs.1 lakh per annum; the Tribunal has wrongly applied the multiplier of '8' instead of '16' as per the judgement of the Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation**¹; as the deceased was conducting cell phone business, the appellant is entitled for future prospects as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi and others**²; and thus he seeks enhancement of the compensation.

Per contra, learned counsel for the respondent-Insurance Company would contend that in the absence of any supporting

¹ 2009 (6) SCC 121

² 2017 ACJ 2700

evidence, the Tribunal has rightly taken the notional income of the deceased as Rs.15,000/- per annum and adopted the multiplier of '8' based on the age of the mother of the deceased. The Tribunal has granted just and fair compensation and the same needs no interference of this Court. Thus, he prayed to dismiss the appeal.

In the facts and circumstances of the case and in considered view of this Court, the Tribunal erred in taking the notional income of the deceased as Rs.15,000/- per annum treating him as a non-earning member, on the ground that no supporting evidence was adduced to substantiate the evidence of PW.1 that the deceased used to earn Rs.1 lakh per annum. Exs.A.7, A.8 and A.9 Certificates show that the deceased was holding Diploma Certificate in Cell Phone Technology. The Hon'ble Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***³, held that the income of the daily wage earner has to be taken at Rs.4,500/-. In the case on hand, the deceased was aged about 32 years, unmarried and trained in cell phone technology. Hence, it would be just and proper to consider the earnings of the deceased as Rs.4,500/- per month. As the deceased was unmarried and aged about 32 years at the time of the accident, 1/2 of his income has to be deducted towards his personal expenses. The Tribunal has applied the multiplier '8' based on the age of the mother of the deceased instead of applying the multiplier '16' based on the age of the deceased, as per the decision of the Hon'ble Supreme Court in ***Sarla Verma (1 supra)***. Thus, the loss of dependency works out to Rs.4,32,000/-. That apart, the appellant is entitled for

³ 2011 (6) ALT 48 (SC)

Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses as per the ratio laid down by the Hon'ble Supreme Court in ***Pranay Sethi (2 supra)***. The contention of the learned counsel for the appellant that the appellant is entitled for compensation under the head 'loss of future prospects' cannot be accepted in the absence of any evidence to the effect that the deceased was conducting cell phone business and was a fixed wage earner. Hence, the appellant is entitled for the total compensation of Rs.4,62,000/-.

Accordingly, the compensation of Rs.95,000/- granted by the Tribunal is hereby enhanced to Rs.4,62,000/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization payable by both the respondents jointly and severally. The respondents shall deposit the entire compensation amount, duly deducting the amounts already deposited, if any, 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 appellant is entitled to withdraw the same.

Accordingly, the appeal is allowed in part to the extent indicated above.

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

(M.GANGA RAO, J)

02.11.2018
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