THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.653 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the order and decree dated 07.09.2010 passed in M.V.O.P.No.34 of 2010 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Srikakulam, granting compensation of Rs.2,95,000/- as against the claim of Rs.4,00,000/- for the death of the deceased-Nayana Adinarayana in the motor accident occurred on 20.04.2009.

Appellants, who are the wife, son and parents of the deceased respectively, filed claim petition under Section 166 read with Rule 455 of the Motor Vehicles Act against the respondents stating that on 20.04.2009 at about 7.30 p.m. the deceased, appellants 1 and 2 and one Neelapu Durgarao boarded the lorry bearing No.AP07/TT 8199 belonging to R-1 at Srikakulam bypass road to reach Vijayawada. While the lorry reached opposite to Arabhindo Factory on NH-5 road at Pydi Bheemavaram Village, the driver of the offending lorry drove the lorry in a rash and negligent manner with high speed and applied sudden brakes without giving any signal, due to which the deceased who sat on the lorry load fell down from the lorry, sustained multiple fracture injuries and fell unconscious. While he was being shifted to Government Hospital, Vizianagaram, he died on the way to hospital. Alleging that the deceased was aged about 34 years and used to earn Rs.5000/- per month by working as a mason, the appellants claimed compensation of Rs.4,00,000/-.

R-1 owner of the offending lorry remained *ex parte*.

R-2 Insurance Company filed a written statement denying the material averments of the claim petition and further stating that the offending vehicle was registered as a transport vehicle having seating capacity of only one, which means except the driver no other can be permitted to sit in the said vehicle. Hence, the deceased comes within the ambit of 'gratuitous passenger' and his travel in the offending lorry is in violation of provisions of the M.V.Act as well as breach of terms and conditions of the policy. Hence, the claim petition is liable to be dismissed against it.

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

1) Whether the deceased-Nayana Adinarayana, son of Dalayya died on account of the injuries sustained by him in the Motor vehicle Accident that took place on 20.04.2009 at about 9.00 PM on NH 5 road opposite to Arabindo Factor, Pydi Bheemavaram, Ranasthalam Mandal, Srikakulam district? If so, the said accident had only occurred due to the rash and negligent driving of the Lorry bearing No.AP07/TT 8199 by its driver?
2) Whether the petitioners are entitled to claim any compensation for the death of the deceased Nayana Adinarayana son of Dalayya? If so, to what amount and from whom?
3) To what relief?

On behalf of the appellants, PW.1 was examined and Exs.A.1 to A.6 were got marked. On behalf of the respondent-Insurance Company, RW.1 was examined and Exs.B.1 and B.2 were got marked.

The Tribunal based on the evidence of PW.1 coupled with the documents under Exs.A.1 to A.4 held that the accident was occurred due to rash and negligent driving of the lorry. The

Tribunal came to the conclusion that the deceased was travelling in the offending vehicle, which is a goods vehicle, as a gratuitous passenger and carrying a gratuitous passenger is in violation of terms and conditions of the Insurance Policy on the part of the owner of the vehicle and thereby the Tribunal held that the Insurance Company is not liable to pay the compensation. The Tribunal having taken the income of the deceased as Rs.75/- per day, awarded the total compensation of Rs.1,50,000/- along with proportionate costs and interest @ 7.5% per annum. Aggrieved by the said findings of the Tribunal and quantum of compensation awarded, the appellants are before this Court.

Sri Aravala Rama Rao, learned counsel for the appellants, would contend that the deceased was working as a mason and earning Rs.5,000/- per month, he was aged about 34 years, hale and healthy and maintaining his family. The Tribunal has erroneously taken the income of the deceased as Rs.75/- per day while calculating the compensation. The Tribunal has not granted compensation under conventional heads as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[1]. Further, the appellants are also entitled for future prospects, for which, he placed reliance on ***Neeta vs. Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur***[2]. He would further contend that it is the fault of the driver to allow the deceased as gratuitous passenger in contravention of the provisions of the M.V. Act.

Per contra, Sri Devanand, learned counsel for R.2, would contend that the Insurance Policy does not cover the risk of the

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[1] 2017 Law Suit (SC) 1093
[2] (2015) 3 SCC 590

gratuitous passenger. Hence, the Insurance Company is not liable to pay compensation. Further, the Tribunal wrongly applied the multiplier '15' instead of '14'. The Tribunal rightly dismissed the claim petition against the Insurance Company holding that the Insurance Company is not liable to pay compensation. The said finding could not be found fault with.

Having considered the rival contentions and perused the evidence on record, this Court find that the Tribunal erred in exonerating the Insurance Company from the liability. The Hon'ble Supreme Court in ***Manuara Khatun vs. Rajesh Kr. Singh***[3] held on facts that since the victim therein was travelling in offending vehicle as gratuitous passenger, the Insurance Company cannot be held liable to suffer the liability out of the accident on the strength of the insurance policy. However, keeping in view the benevolent object of the Act and other relevant factors, the Hon'ble Supreme Court directed the Insurance Company to pay the awarded sum to the claimants therein and then to recover the said sum from the insured by applying the principle of 'pay and recover'. Following the ratio laid down by the Hon'ble Supreme Court in ***Manuara Khatun (3 supra)*** and even assuming that the deceased was a gratuitous passenger travelling in the offending vehicle at the time of accident, the respondent-Insurance Company is directed to satisfy the award and then recover the same from the insured-R.1 by following due process of law.

As regards quantum of compensation, it is found that the Tribunal erred in taking the income of the deceased as Rs.75/- per day. As per the evidence on record, the deceased was hale and

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[3] 2017 (2) ALD 65 (SC)

healthy, aged about 34 years and working as a mason, at the time of his death. The Hon'ble Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***[4], held that the income of the daily wage earner could be taken as Rs.4,500/-. In the case on hand, the accident took place in the year 2009, deceased was aged about 34 years and working as mason, skilled worker. Hence, it is just, fair and reasonable to take the monthly income of the deceased as Rs.4,500/- per month. Further, as the dependents of the deceased are four in number, as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[5], 1/4th has to be deducted from the earnings of the deceased towards personal expenses. Thus, the net earnings of the deceased would be Rs.40,500/- per annum. Further, as per Ex.A.2-Post Mortem certificate, the age of the deceased was '45'. Hence, as per the ratio laid down in ***Sarla Verma (5 supra)***, for the age group 41-45, the appropriate multiplier would be '14' and thereby the Tribunal erred in taking the multiplier '15'. Thus, the loss of dependency works out to Rs.5,67,000/- (Rs.40,500/- X 14). That apart, the appellants are entitled for Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and the first appellant is entitled for Rs.40,000/- towards loss of consortium, as per ***Pranay Sethi (1 supra)***. As regards future prospects, in view of the ratio laid down in ***Pranay Sethi (1 supra)***, the claimants are entitled for compensation towards future prospects only in case the deceased was a fixed wage earner or self employed. In the case on hand, the deceased was a mason. Hence, he cannot be termed

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[4] 2011 (6) ALT 48 (SC)
[5] 2009 (6) SCC 121

either as a fixed wage earner or self-employed and he can only be termed as a skilled worker. In ***Neeta (2 supra)***, the deceased was working as a carpenter in Shri Prasad Constructions, Belgaum, and he was also having some agricultural income. In such a situation, the Hon'ble Supreme Court awarded future prospects to the claimants therein. But, in the present case, the deceased was a mason i.e. a skilled worker, but not a fixed wage earner. Hence, the facts in ***Neeta (2 supra)*** are not applicable to the case on hand. Further, the claim of the appellants that the Tribunal ought to have granted interest @ 9% per annum instead of 7.5% per annum could not be countenanced. The Tribunal rightly granted interest @ 7.5% per annum taking into consideration the prevailing bank interest rates. Therefore, in all the appellants are entitled for Rs.6,37,000/- towards compensation.

Though the compensation claimed by the appellants before the Tribunal was only Rs.3,00,000/-, however, as per the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[6], compensation can be granted over and above the claim. Hence, the compensation awarded by the Tribunal is hereby enhanced to Rs.6,37,000/-. However, the appellants shall pay the difference of Court Fee for the excess amount of Rs.3,37,000/-.

Accordingly, the appeal is allowed and the compensation awarded by the Tribunal of Rs.2,95,000/- is enhanced to Rs.6,37,000/-, out of which, first appellant is entitled for Rs3,37,000/- and appellants 2 and 3 are entitled for Rs.1,50,000/- each along with proportionate costs and interest. Since it is born

[6] (2003) 2 SCC 274

from the impugned order that the 4th appellant died during the course of enquiry, the total compensation amount has been apportioned amongst appellants 1 to 3. The respondent-Insurance Company shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization, after deducting the amounts if any already deposited, within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellants are at liberty to withdraw their respective share amounts, as stated above. Further, the second respondent-Insurance Company is at liberty to recover the amounts paid by it from R.1-insured-owner of the offending vehicle as per the principle of 'pay and recover'.

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

(M.GANGA RAO, J)

30.11.2018
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