THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.1838 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the order and decree dated 22.02.2008 passed in M.V.O.P.No.1364 of 2006 by the Chairman, MCAT (District Judge), Khammam, granting compensation of Rs.3,00,000/- along with costs and interest @ 7.5% per annum as against the claim of Rs.6,00,000/- for the death of the deceased Shaik Ahmad in the motor accident occurred on 29.06.2005.

The appellants-wife, children and parents of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act alleging that on 20.10.2006 at about 11.00 a.m. when the deceased was proceeding towards Charminar Hotel side at Sathupally Town on foot, one Tipper bearing No.AP-20-W-7776 came in rash and negligent manner with high speed and dashed against the deceased, due to which the deceased sustained grievous head injury and died on the spot. Police registered a case in crime No.200 of 2006 for the offence punishable under Section 304-A of Indian Penal Code against the driver of the offending vehicle tipper. It is further stated that the deceased was hale and healthy, aged about 27 years and used to earn Rs.7,500/- per month by running auto mechanic shed, at the time of accident. Hence, they claimed compensation of Rs.6,00,000/- for the untimely death of the deceased in the said motor accident.

The second respondent-Insurance Company filed a counter affidavit denying the averments of the claim petition and filed petition under Section 170 of the MV Act seeking protection. It was further averred that the first respondent-owner of the vehicle has not informed the second respondent about the accident, particulars of the vehicle and driving license particulars of the driver of the offending vehicle Tipper, which is material violation of policy conditions on the part of R-1 and thereby denied its liability to pay compensation.

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

(1) Whether the accident took place due to rash and negligent driving of the accident vehicle, Tipper bearing No.AP-20-W-7776 by its driver?

(2) Whether the petitioners are entitled to claim any compensation? If so, to what amount and from which of the Respondents?

(3) To what relief?

On behalf of the appellants, PWs 1 to 3 were examined and Exs.A.1 to A.5 were got marked. On behalf of the respondents, no oral evidence was adduced, however, Ex.B.1 copy of Insurance Policy was got marked.

The Tribunal considering the evidence of PW-2 eye witness to the accident coupled with documentary evidence under Exs.A.1 to A.5 held that the accident was occurred only on account of the rash and negligent driving of the driver of the Tipper and the tyre of the Tipper ran over the head of the deceased, due to which the brain of the deceased came out and he died instantaneously. Thus, the Tribunal answered issue No.1 in favour of the appellants.

The Tribunal has taken the income of the deceased as Rs.2,000/- per month disbelieving the claim of the appellants and evidence of P.W.1-wife of the deceased and P.W.3-K.Ananda

Kumar, who worked under the deceased in the mechanic shed, that the deceased used to earn Rs.7,500/- per month by running a mechanic shop, in the absence of supporting evidence. After deducting 1/3rd therefrom towards personal expenses, the Tribunal has calculated the annual earnings of the deceased at Rs.16,000/-. The Tribunal has applied the multiplier of '18' considering the age of the deceased as '28' years and thereby assessed the loss of dependency as Rs.2,88,000/-. In addition to the same, the Tribunal has granted Rs.10,000/- to the first appellant towards loss of consortium and Rs.2,000/- towards funeral expenses. Thus, in all, the Tribunal has awarded Rs.3,00,000/- towards compensation to the appellants along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. Aggrieved by the quantum of compensation, the appellants are before this Court seeking enhancement of the compensation.

Sri K.Laxmana Perumallu, learned counsel appearing for Sri M.Subba Reddy, learned counsel for the appellants, would contend that the Tribunal granted a meagre compensation of Rs.3 lakhs as against the claim of Rs.6 lakhs; the Tribunal grossly erred in disbelieving the evidence of PWs 1 and 3 that the deceased used to earn Rs.7,500/- per month by running mechanic shop at Sathupalli Town in Khammam District; the Tribunal has taken only Rs.2,000/- per month as earnings of the deceased; the Tribunal has wrongly applied the multiplier of '18' instead of '20'; and the Tribunal erred in granting interest @ 7.5% per annum instead of 12% per annum. Thus, he seeks enhancement of the compensation.

Per contra, Sri V.Venkat Rami Reddy, learned counsel for the respondent-Insurance Company, would contend that the Tribunal has rightly assessed the monthly income of the deceased as Rs.2,000/- per month in the absence of any legal evidence in support of the claim of the appellants that the deceased used to earn Rs.7,500/- per month by running a Mechanic shop; the Tribunal rightly applied the multiplier of '18' as the deceased is aged 28 years as per the ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[1]; the rate of interest granted by the Tribunal @ 7.5% cannot be said to be on lower side; and the Tribunal granted Rs.10,000/- towards loss of Consortium and Rs.2,000/- towards funeral expenses, which cannot be said to be meagre amounts. Hence, he contends that the appeal is misconceived and liable to be dismissed.

The finding of the Tribunal with regard to manner of accident and death of the deceased in the said accident was not disputed by the learned counsel for the Insurance Company. In view of the same and in the absence of any contrary evidence, the said finding of the Tribunal could not be interfered with.

As regards quantum of compensation, having heard the leaned counsel appearing for the parties and perused the evidence on record, this Court finds that the Tribunal grossly erred in taking the monthly income of the deceased as Rs.2,000/-. As per the evidence available on record, the deceased used to run mechanic shop in Sathupalli Town, he used to maintain a big family consisting of his wife, two children and parents, and P.W.3 was the worker working under him in the mechanic shed. In ***Sri***

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[1] 2009 (6) SCC 121

Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited[2], the Hon'ble Supreme Court held that the person aged about 35 years, working as a coolie, could easily earn Rs.4,500/- per month. In the case on hand, the deceased was aged about 28 years and skilled labour, used to run a Mechanic shop in a small Town. Hence, it is just and proper to take the earnings of the deceased as Rs.3,500/- per month and Rs.42,000/- per annum, as the accident took place in the year 2006. Since the dependants of the deceased are five in number, as per the ratio laid down in ***Sarla Verma (1 supra)***, 1/4th has to be deducted from the earnings of the deceased towards personal expenses and appropriate multiplier would be '20' instead of '18' applied by the Tribunal. Hence, the loss of dependency works out to Rs.6,30,000/- [Rs.42000*3/4*20]. In addition to the above, as per the ratio laid down in ***National Insurance Company Limited vs. Pranay Sethi and others***[3], 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. Thus, in all the appellants are entitled for Rs.7,00,000/- towards compensation along with costs and interest @ 7.5% per annum from the date of petition till the date of realization.

Though the compensation claimed by the appellants before the Tribunal was only Rs.6,00,000/-, 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

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[2] 2011 (6) ALT 48 (SC)
[3] 2017 Law Suit (SC) 1093
[4] (2003) 2 SCC 274

should be awarded only upto the claim made by the appellants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.7,00,000/-. However, the appellants shall pay the difference of Court Fee for the excess amount of Rs.1,00,000/-.

Accordingly, the appeal is allowed enhancing the compensation granted by the Tribunal of Rs.3,00,000/- to Rs.7,00,000/- payable by the respondents jointly and severally. The respondents shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with costs and interest, 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, appellant Nos.1 and 4, wife and mother of the deceased, are entitled to withdraw Rs.2 lakhs each along with proportionate costs and interest and appellant Nos.2, 3 and 5, son, daughter and father of the deceased respectively, are entitled to withdraw Rs.1 lakh each along with proportionate costs and interest, subject to payment of excess court fee.

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

(M.GANGA RAO, J)

23rd November, 2018
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