THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.NO.291 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the order and decree dated 09.10.2007 passed in M.V.O.P.No.320 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad, granting compensation of Rs.4,62,000/- as against the claim of Rs.8,00,000/- for the death of the deceased-A.Bhadrappa.

The appellants-claimants, who are wife, daughter and mother of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act, 1988, alleging that on 20.07.2006, the deceased was proceeding on his cycle towards Langar House, Hyderabad, at about 2.30 p.m. and when he reached near Patil & Company, Granite Depot at Shaikpet Nala, a lorry bearing No.AP 11 W 2348 was proceeding in the same direction, driven by its driver in a rash and negligent manner at high speed and dashed the cycle of the deceased from back side, as a result of which, the deceased sustained severe bleeding injuries and died on the spot. The Station House Officer, Golconda Police Station registered a case in Crime No.289 of 2006 under Section 304-A IPC against the driver of the said lorry. It was further stated that the deceased was working as a Band Master in Anand Band, Shalibanda, Hyderabad, and used to earn a monthly salary of Rs.3,500/- apart from Rs.200/- per day as a tip and he was also a supplier of broom sticks and used to earn Rs.2,000/- per month on the said business and his total monthly income was Rs.5,500/-. Due to sudden demise of the deceased, the claimants suffered mental agony and they lost the support of the deceased.

The first respondent, being the owner of the offending lorry, remained *ex parte*.

The second respondent-Insurance Company filed a counter denying the averments in the claim petition. While disputing the rash and negligent driving of the driver of the offending vehicle, the learned counsel stated that the claim of Rs.8,00,000/- is highly excessive.

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

1) Whether the accident occurred owing to the rash and negligent driving of vehicle AP 11W 2348 (Gas Cylinder Lorry)?

2) Whether the petitioners are entitled to any compensation, if so to what amount and against whom?

3) To what relief?

During the course of trial, on behalf of the appellants-claimants, PWs.1 to 4 were examined and Exs.A.1 to A.7 were marked. No oral or documentary evidence was adduced on behalf of the respondents.

The Tribunal based on the evidence of P.W.3, an eye witness to the accident, coupled with Exs.A.1 and A.3, came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the offending lorry, whereby the deceased sustained bleeding injuries and died on the spot. The Tribunal considering the evidence of P.W.2, who is the proprietor of Anand Band, and Ex.A.5, which is a salary certificate issued by P.W.2 to the effect that the deceased worked with him during 2003 to 2006, opined that the deceased used to play musical instruments like Dugga, Tasi and Trumpet. Besides that, it took into account the evidence of P.W.3, who is also a Band Master, and accepted the evidence of P.W.2 as regards the occupation and income of the deceased. Based on the evidence of P.W.2 and Ex.A.5-salary certificate, the Tribunal has taken the income of the deceased at Rs.3,500/- per month and assessed his annual income at Rs.42,000/-. However, one-third out of it was deducted towards his personal expenses and arrived at Rs.28,000/- as annual contribution of the deceased to the family. The Tribunal adopted a strange method while calculating the dependency of the mother of the deceased. Out of Rs.28,000/-, one-fourth (Rs.28,000/- x ¼ = 7,000/-) set apart for his mother, the third claimant, since the deceased would have contributed one-fourth income towards maintenance of his mother. As her age was mentioned as 50 years, it applied '11' multiplier and arrived her dependency at Rs.77,000/- (Rs.7,000/- x 11) .

Thereafter, the Tribunal calculated the loss of dependency in respect of the other claimants, i.e., wife and daughter of the deceased, with the remaining amount of contribution i.e. Rs.21,000/- and applied the multiplier '17' as the age of the deceased was mentioned as 31 years and calculated the dependency of claimants 1 and 2 at Rs.3,57,000/-. In addition to the same, Rs.10,000/- was granted towards 'consortium' to the first claimant; Rs.2,000/- towards 'funeral expenses'; Rs1,000/- towards 'transportation'; and Rs.15,000/- towards of 'loss of estate'. In all, the Tribunal granted Rs.4,62,000/- towards compensation to all the claimants with proportionate costs and future interest @ 7.5% per annum. Being not satisfied with the compensation granted by the Tribunal, the appellants-claimants filed this appeal seeking enhancement of the same as per law.

Learned counsel for the appellants would contend that the Tribunal ought to have taken the income of the deceased at Rs.5,500/- per month as per the evidence of P.Ws.2 and 3, instead of Rs.3,500/- per month as it was stated that the deceased was doing broom sticks business apart from playing musical instruments. He would further contend that the Tribunal has adopted a strange method while calculating the dependency of the mother of the deceased by taking her age and one-fourth of the total income arrived at by it, which is illegal. It ought to have taken the contribution of the deceased to the family at 28,000/- and applied '17' multiplier to the total income. Learned counsel would also contend that the Tribunal also erred in not granting 40% towards 'loss of future prospects' as the deceased was aged below 40 years as per the judgment of this Court in NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI[1] and also entitled for Rs.70,000/- under conventional heads.

Per contra, learned counsel for the Insurance Company vehemently argued that the Tribunal was justified in taking the income of the deceased at Rs.3,500/- per month, applying the multiplier '17' after calculating the dependency of mother of the deceased separately. He would further contend that the appellants are not entitled to any amount towards loss of future prospectus, much less 40%. Hence, the appeal is misconceived and liable to be dismissed.

In the facts and circumstances of the case and in the considered view of this Court, the Tribunal based on the evidence of P.W.2, the proprietor of Anand Band, where the deceased was working as a Band Master, and the salary certificate Ex.A.5, as per which, the deceased used to earn an amount of Rs.3,500/- per month, arrived at his annual income at Rs.42,000/-, and from it, one-third was deducted towards his personal expenses and arrived at Rs.28,000/- as contribution to the family. However, the Tribunal has committed a grave error in setting up one-

[1] 2017 (6) ALD 170 (SC)

fourth of the income out of Rs.28,000/- towards dependency of the third petitioner-mother, and multiplier '11' was applied by taking into account her age and granted Rs.77,000/- on that count, which was incorrect. The Tribunal ought to have calculated the loss of dependency by taking the entire amount of Rs.28,000/- and should have applied the multiplier '16', instead of '11' as the age of the deceased was 31 years at the time of accident, as per the judgment of the Supreme Court SARLA VERMA v. DELHI TRANSPORT CORPORATION[2].

This Court finds that as the deceased was a salaried person having fixed income and used to get a monthly salary of Rs.3,500/- as per the evidence of P.W.2, proprietor of Anand Band, where the deceased used to work, and Ex.A.5, salary certificate, the appellants-claimants are entitled to 40% towards 'future prospects'. To arrive at future prospects, the total income of the deceased, i.e. Rs.42,000/-, should be taken into account (Rs.42,000/- x 40% = 16,800/-). After deducting one-third towards his personal expenses out of Rs.58,800/- (Rs.42,000 + 16,800), the loss of dependency can be calculated at Rs.39,200/-. Since the age of the deceased was 31 years by the date of death, the appropriate multilayer for the age group between 31 and 35 years is '16' as per the judgment of the Supreme Court in SARLA VERMA's case (2 supra). Therefore, the loss of dependency of the claimants comes to Rs.6,27,200/-. In addition to that, the appellants-claimants are entitled for Rs.70,000/- towards conventional heads per the judgment of the Supreme Court in PRANAY SETHI's case (1 supra). The appellants are also entitled to an amount of Rs.40,000/- towards 'loss of consortium' and an amount of Rs.15,000/- towards 'transportation charges'. Accordingly, the compensation is

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[2] (2009) 6 SCC 121

enhanced from to Rs.4,62,000/- to Rs.7,69,200/-. The Tribunal has rightly granted interest @ 7.5% per annum. Hence, the respondents are jointly and severally liable to pay the entire compensation with interest @ 7.5% per annum to the appellants.

The appeal is allowed to the extent indicated above. However, the respondents are directed to deposit the compensation amount within two months from the date of receipt of a copy of this order, in default, the appellants-claimants are entitled to enhanced rate of interest at 9% per annum from the date of filing of the petition till the date of deposit of the amount.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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M.GANGA RAO,J

Date:31.10.2018

GJ