THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A No.319 of 2011

JUDGMENT:

The appellants who are the claimants filed this appeal against the Award and decree, dated 06.12.2008, passed in M.V.O.P.No.226 of 2006 by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Kadapa at Proddatur (for short "the Tribunal), granting Rs.1,30,000/- against the claim of Rs.2,00,000/- for the death of their son Jilani Basha in a motor accident that occurred on 13.03.2004.

The appellants filed claim petition under Section 166 of the Motor Vehicles Act, 1988, alleging that their son Jilani Basha died in a motor accident on 13.03.2004 at 4 p.m due to the negligent driving of the Vehicle, i.e., Tractor & Trailer, bearing registration No.AP-04-U-7298 and 7300 by its driver. The Tractor and Trailer belonged to Respondent No.1 and were insured with Respondent No.2. The deceased was aged 20 years and was earning Rs.4,000/- per month as a mechanic. The deceased and his friend while going on a motor cycle, bearing registration No.AP-04-D8830, near Anil gas godown, the offending vehicle of respondent No.1, driven in negligent manner, dashed their motorcycle, causing the accident. Due to which, the son of the appellants Jilani Basha sustained severe injuries and died while being taken to the Government Hospital, Proddatur. The appellants lost their dependency due to untimely death of their son. The driver of respondent No.1 was prosecuted in a criminal case. Hence, the appellants filed the claim petition claiming compensation of Rs.2,00,000/-.

Respondent No.1 remained *ex parte*. Respondent No.2-insurance company filed counter denying the averments of the claim petition. The

2nd respondent specifically denied that the accident occurred due to the negligence of the driver of the offending vehicle and it was occurred due to the negligence of the driver of the motor cycle. The motor cycle dashed the offending vehicle. The claim petition is bad for non-joinder of the owner and insurer of the motorcycle. The 2nd respondent further contended that the deceased was not a mechanic and was not earning Rs.4,000/- per month as claimed.

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

1. Whether the deceased died in a motor accident that occurred on 13.03.2004 at 4 p.m due to rash and negligent driving of the vehicle No.AP-04-U7298 and 7300 by its driver?

2. Whether the petitioners are entitled to the compensation as prayed?

3. To what relief?

On behalf of the claimants, the 1st claimant was examined as PW 1 and got examined PW 2, who witnessed the accident, and got marked Exs.P1 to P5. On behalf of the respondents, RW 1 was examined and Ex.B1 was marked.

The Tribunal, based on the evidence of PW 1 and PW 2, who was going on the motorcycle at the time of the accident and who deposed to the manner of the accident, and Exs.P1, P2, P3 and P4, considering the evidence of RW 1, held that the accident was occurred due to negligent driving of the driver of the offending vehicle, and accordingly, answered the Issue No.1 in favour of the claimants, the same could not be found fault with in the absence of any contrary evidence.

With regard to quantum of compensation, the Tribunal has taken the notional income of the deceased as Rs.15,000/- per annum and applied the multiplier '17' as the age of the deceased was 20 years, as per the decision of the Hon'ble Supreme Court in *Sarla Verma and others v. Delhi Transport Corporation and another*[1] and arrived at Rs.2,55,000/-, deducted 1/3rd therefrom towards personal expenses and arrived at Rs.1,70,000/- payable towards compensation. The Tribunal further observed that the deceased had driven the motorcycle without having any valid driving licence and there is contributory negligence on his part and accordingly deducted Rs.40,000/- towards contributory negligence from Rs.1,70,000/-, and granted the remaining amount of Rs.1,30,000/- as compensation to the claimants along with interest @7.5% p.a with proportionate costs and the Tribunal further fixed the liability on respondents Nos.1 and 2 jointly and severally.

Learned counsel for the appellants would contend that the Tribunal has grossly erred in eschewing the evidence of PW 1 with regard to the income of the deceased at Rs.4,000/- per month, earning by doing mechanic works, and he was hale and healthy, aged about 20 years. The claimants are depending on the income of the deceased. On the ground that there is no evidence in support of their claim, the Tribunal ought to have taken the income of the deceased as Rs.3,500/- per month. In the absence of any contrary evidence, Rs.3,500/- per month could be taken as income of the deceased, as held by the Hon'ble Supreme Court. The Tribunal has applied multiplier '17' instead of '18', as the age of the deceased was 20 years, as per the decision of the Hon'ble Supreme Court in *Sarla Verma and others v. Delhi Transport Corporation and*

[1] (2009) 6 SCC 121

another (1 supra) the multiplier to be applies is ‘18’ for 20-25 years aged people. The deceased being unmarried person the deduction towards personal & living expenses to the extent of 1/3rd, as done by the tribunal, was wrong. One half has to be deducted towards personal expenses as the deceased was an unmarried person and aged 20 years. The Tribunal has not properly granted funeral expenses, conventional damages etc. The Tribunal without there being any evidence, held that the deceased was riding the motorcycle without driving licence and there was negligence on his part to drive the vehicle without licence and that he contributed to the accident in his own manner. Without there being any evidence with regard to the negligent driving of the deceased in driving the motorcycle, deduction of Rs.40,000/- from the compensation amount towards contributory negligence is illegal and incorrect as held by the Hon’ble Supreme Court in *Dinesh Kumar v. National Insurance Co.Ltd.*[2].

Per contra, Sri Challa Srinivasa Reddy, learned counsel, appearing for the 2nd respondent-insurance company, would contend that the Tribunal has rightly taken the notional annual income of the deceased at Rs.15,000/- per annum and applied the multiplies ‘17’ and the deceased drove the motorcycle without having any valid driving licence and hence the Tribunal rightly deducted Rs.40,000/- towards contributory negligence, which could not be stated to be illegal without there being any evidence. The Tribunal assessed the evidence and came to the right conclusion and granted fair and just compensation of Rs.1,30,000/- with proportionate costs and interest @7.5% p.a and liability was fixed on respondents Nos.1 and 2 jointly and severally, and there are no grounds

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[2] (2018) 1 SCC 750

to interfere with the award passed by the Tribunal and the appeal is misconceived and is liable to be dismissed.

In the facts and circumstances of the case, this court is of the opinion that the Tribunal has grossly erred in taking notional annual income of the deceased as Rs.15,000/-, disbelieving the evidence of PW 1 that the deceased used to earn Rs.4,000/- per month by doing mechanical works. As the deceased was aged 20 years and he is hale and healthy by the time of accident, in the absence of any contrary evidence with regard to the income of the deceased, as held by the Hon'ble Supreme Court of India in *National Insurance Co.Ltd. v. Pranay Sethi and others*[3] the income of the deceased could be taken as Rs.3,500/- per month. As the deceased was aged 20 years, the multiplier applied should be '18', but not '17' as applied by the Tribunal and one half has to be deducted therefrom towards personal expenses, as the deceased being unmarried person and aged 20 years. But the tribunal erred in deducting 1/3rd therefrom. The Tribunal also erred in not granting conventional damages, loss of dependency etc., while awarding compensation.

The finding of the Tribunal that there is contributory negligence on the part of the deceased and deducting of an amount of Rs.40,000/- from the compensation amount on the ground that the deceased had driven the vehicle without having driving licence could not be countenanced in the light of the judgment of the Hon'ble Supreme Court in *Dinesh Kumar v. National Insurance Co.Ltd.* (2 supra) in the absence of any evidence.

In view of the above, this court is of the opinion that it is just and proper to enhance the compensation as under.

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[3] 2017 (6) ALD 170 (SC)

As per the well settled principles, in case of death of an unmarried person, 50% of his income should be deducted towards personal living expenses and the remaining 50% should be taken as contribution to the family, and further, the proper multiplier to be applied is '18' but not '17' as applied by the Tribunal. Since the wrong multiplier was adopted, the amount needs to be recalculated as under:

Rs.3,500/- x 12 x 18	=	Rs.7,56,000/-
(-) 50%	=	Rs.3,78,000/-

		Rs.3,78,000/-
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Therefore, the claimant is entitled to a sum of Rs.3,78,000/- towards loss of dependency.

In addition to the above, the claimants being the mother and father of the deceased they are also entitled to a sum of Rs.15,000/- towards loss of love and affection, Rs.15,000/- towards loss of estate and another Rs.15000/- towards funeral expenses. As per the judgment of the Hon'ble Supreme Court in *National Insurance Co.Ltd. v. Pranay Sethi and others* (3 supra), the total compensation comes to Rs.4,23,000/-, which is just and reasonable and can be awarded to the claimants. The appellants are entitled to grant higher compensation over and above the compensation claimed in the claim petition, and this court is empowered to grant higher compensation than claimed, as per the judgment of the Hon'ble Supreme Court in *Nagappa v. Gurudayal Singh and ors.*[4].

In the result, the MACMA is allowed in part, enhancing the compensation from Rs.1,30,000/- to Rs.4,23,000/- to the claimants, payable by respondents No.1 and 2 jointly and severally together with

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[4] 2003 (1) ALD 1 (SC)

proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization. Respondents Nos.1 and 2 are directed to deposit the compensation amount as directed above within a period of two months from the date of receipt of a copy of this judgment. The claimants are entitled to withdraw the entire amount equally, as and when deposited, without furnishing any security.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 16.11.2018
Dsr