THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.1306 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 18.10.2002 passed in O.P.No.1203 of 2001 by the Chairman, Motor Accidents Claims Tribunal (Principal District Judge), Nalgonda, granting compensation of Rs.1,50,000/- as against the claim of Rs.7,00,000/-, on account of death of the deceased-Mettu Inna Reddy, in the motor accident occurred on 18.02.2000.

The appellants, wife and children of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act stating that on 18.02.2000 at about 8.15 p.m. when the deceased was driving Maruti Omni Van bearing No.AP-28-P-1755 and reached near Medchal Bus stop, one Jet bus bearing No.AP-11-V-689 came in rash and negligent manner and dashed against the Maruti Van of the deceased, due to which, he sustained injuries and died. It was stated that the deceased was aged about 31 years at the time of accident, working as a driver in a private society and getting salary of Rs.2,793/- per month. Hence, claimed compensation of Rs.7 lakhs from respondents 1 and 2.

The first respondent-owner remained *ex parte* and the second respondent-Insurance Company filed a counter before the Tribunal denying the averments of the claim petition, stating that the claim was excessive and praying to dismiss the claim.

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

1) Whether the accident happened was due to rash and negligent driving by the driver of the Bus bearing No.AP-11V 689?

2) Whether the petitioners are entitled to any compensation, if so, to what amount?
3) To what relief?

On behalf of the appellants, PWs 1 and 2 were examined and Exs.A.1 to A.6 were got marked. On behalf of the respondents, no oral evidence was adduced, however, Ex.B.1 policy was marked.

The Tribunal based on the evidence of PW-1, wife of the deceased, and P.W.2, eye witness to the accident, Ex.A.1-copy of FIR, Ex.A.2-copy of inquest report and Ex.A.3-Post Mortem report, held that the accident was occurred due to the rash and negligent driving of the bus and thereby answered issue No.1 in favour of the appellants. As regards quantum of compensation, disbelieving Ex.A.5-salary certificate, the Tribunal has taken the income of the deceased as Rs.1,200/- per month thereby contribution of the deceased to his family was taken as Rs.800/- per month and Rs.9,600/- per annum. Pointing out the inconsistency in the age of the deceased and his wife, the Tribunal has taken the age of the deceased as '35' years, thereby applied the multiplier of '14' and calculated the loss of dependency as Rs.1,34,400/- (Rs.9600 X 14). That apart, the Tribunal has granted Rs.15,000/- towards non-pecuniary damages, Rs.10,000/- towards loss of consortium and in all the Tribunal has granted the total compensation of Rs.1,49,400/- rounded off to Rs.1,50,000/- along with costs and interest @ 9% per annum payable by both the respondents jointly and severally. Dissatisfied with the quantum of compensation, the present appeal came to be filed seeking enhancement.

Learned counsel for the appellants would contend that the Tribunal grossly erred in not taking the monthly income of the deceased as Rs.2,793/- as per Ex.A.5-salary certificate; the

Tribunal erred in taking the age of the deceased as '35' instead of '31' years as per Ex.A.-3 post mortem report; the Tribunal granted very meagre amount towards loss of consortium; and the Tribunal grossly erred in not granting any amounts towards future prospects. Accordingly, he seeks enhancement of the compensation awarded by the Tribunal.

Per contra, learned counsel for R-2 made his submissions sustaining the impugned award of the Tribunal.

In the facts and circumstances of the case and in considered view of this Court, the Tribunal grossly erred in taking the income of the deceased as Rs.1,200/- per month *in spite* of holding that the deceased was a qualified driver as per Ex.A.4-driving license and working as a driver in a private Social Service society, at the time of accident. The Tribunal has not assigned any reasons for disbelieving Ex.A.-5-salary certificate, which reveals that the deceased was getting the monthly salary of Rs.2,793/-. Hence, in considered view of this Court, it is just and proper to take the income of the deceased as Rs.2,793/- per month, as per Ex.A.5. As the deceased was a fixed wage earner and aged below 40 years at the time of accident., as per the ratio laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[1], the appellants are entitled for 40% of the income of the deceased towards future prospects, Thus, the income of the deceased comes to Rs.3,910/- per month and Rs.46,920/- per annum. As the dependents of the deceased are three in number, 1/3rd of the income of the deceased as to be deducted towards personal expenses as per the judgment of the

[1] 2017 Law Suit (SC) 1093

Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[2]. Even accepting the age of the deceased as '35' years as held by the Tribunal, the appropriate multiplier for the age group of 30-35 years is '16' instead of '15' adopted by the Tribunal as per the ratio laid down in ***Sarla Verma (2 supra)***. Thus, the loss of dependency works out to Rs.5,00,480/- [(Rs.46920*2/3)X16]. In addition to the above, the appellants are entitled for Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and the first appellant is entitled for Rs.40,000/- towards loss of consortium, as per ***Pranay Sethi (1 supra)***. Hence, in all, the appellants are entitled for the total compensation of Rs.5,70,480/- along with proportionate costs and interest @7.5% per annum. Though the Tribunal granted 9% interest, this Court is of the view that the same is on higher side and inconsistent with the bank interest rate prevailing at the relevant period. Hence, the same is reduced to 7.5% per annum.

Accordingly, the compensation of Rs.1,50,000/- granted by the Tribunal is hereby enhanced to Rs.5,70,480/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization. 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 first appellant is entitled to withdraw Rs.3,70,480/- and the remaining appellants are entitled to withdraw Rs.1 lakh each along with proportionate costs and interest.

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[2] 2009 (6) SCC 121

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)

23.11.2018
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