THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.1299 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the order and decree dated 27.03.2002 passed in O.P.No.439 of 1999 by the Chairman, Motor Accidents Claims Tribunal (District Judge), Nalgonda, granting compensation of Rs.1,25,800/- as against the claim of Rs.2,00,000/-, for the death of the deceased-Muthamma, in the motor accident occurred on 17.01.1999.

The appellants, legal heirs of the deceased, filed claim petition under Section 166 of the Motor Vehicles Act stating that on 17.01.1999 while the deceased and others were travelling as labourers in the lorry bearing No.AP-16V-8117 belonging to R-1 for loading and unloading purpose and when the lorry reached Vemulapally Village, the driver of the lorry drove the lorry in a rash and negligent manner and dashed to a milk tanker, due to which, the deceased received injuries and died while the other inmates of the lorry sustained multiple injuries. The appellants claimed that the deceased was aged 35 years, earning Rs.2,000/- per month and thereby claimed Rs.2 lakhs towards compensation.

Respondent No.1-owner of the offending lorry filed counter denying the averments of the claim petition and contending that the deceased and other injured were not the labourers on the lorry and as the vehicle was insured with R.2, he had no liability to pay any compensation.

Respondent No.2-Insurance Company filed counter 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 was due to rash and negligent driving by the driver of the lorry bearing No.AP-16V-8117?
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 to 4 were examined and Exs.A.1 to A.10 were got marked. On behalf of the respondents, no oral and documentary evidence was adduced.

The Tribunal based on the evidence of PWs 1 to 4, who were the injured and eye witnesses to the accident, and Ex.A.2 copy of charge sheet, held that the accident was occurred due to the rash and negligent driving of the driver of the lorry. Hence, held issue No.1 in favour of the appellants. As regards quantum of compensation, the Tribunal has taken the income of the deceased as Rs.900/- per month, fixed her contribution to the family as Rs.600/- per month and by applying the multiplier '14', the Tribunal arrived the loss of dependency as Rs.1,00,800/-. In addition, the Tribunal has granted Rs.15,000/- towards non-pecuniary charges and Rs.10,000/- towards loss of consortium to appellant No.1. Thus, in all, the Tribunal granted Rs.1,25,800/- along with costs and interest @ 9% per annum from the date of petition till realization. Aggrieved by 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.2,000/- as claimed; the Tribunal granted very less amounts towards loss of consortium; and the Tribunal ought to have granted interest @ 12% instead of 9% per annum. Accordingly, he seeks enhancement of the compensation awarded by the Tribunal.

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

Having heard the learned counsel for the parties, perused the record and considering the facts and circumstances of the case, this Court finds that the Tribunal grossly erred in taking the monthly income of the deceased as Rs.900/- per month ignoring the claim of the appellants for Rs.2,000/-, without assigning any reason. In ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***[1], the Hon'ble Supreme Court held that the income of a daily wage earner could be taken at Rs.4,500/-. In the case on hand, the accident took place in the year 1999, deceased was aged about 35 years and working as labourer. Hence, the earnings of the deceased could be easily taken as Rs.2,000/- per month, as claimed by the appellants. As the dependants of the deceased are three in number, 1/3rd of the income of the deceased has to be deducted towards personal expenses and as the deceased was aged about 35 years as considered by the Tribunal, the appropriate multiplier would be '16', as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[2] as the petitioner belongs to the age group of 30-35 years. Thus, the loss of dependency works out to Rs.2,56,000/- [(Rs.2000 X 2/3)X12X16). That apart, the appellants are entitled for Rs.15,000/- towards loss

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[1] 2011 (6) ALT 48 (SC)
[2] 2009 (6) SCC 121

of estate, Rs.15,000/- towards funeral expenses and the first appellant is entitled for Rs.40,000/- towards loss of consortium, as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[3]. Thus, in all the appellants are entitled for the total compensation of Rs.3,26,000/- along with costs and interest @ 9% per annum from the date of petition till realization. Though the claim of the appellant before the Tribunal was only for Rs.2 lakhs, I.A.No.1/2018 was filed before this Court seeking enhancement of claim from Rs.2 lakhs to Rs.5 lakhs and the same was allowed by this Court. 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.1,25,800/- granted by the Tribunal is hereby enhanced to Rs.3,26,000/- 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.1,26,000/- and the remaining appellants are entitled to withdraw Rs.1 lakh each along with proportionate costs and interest.

[3] 2017 Law Suit (SC) 1093

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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