THE HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A Nos.1642 & 1643 of 2011

COMMON JUDGMENT:

Against the Award, dated 30.03.2011, passed in O.P.Nos.1132 & 1133 of 2008, on the file of the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (for short "the Tribunal), the present appeals are filed by the New India Assurance Company Limited, which has been made liable to pay compensation amounts of Rs.4,95,000/- and Rs.6,05,000/- respectively to the claimants in the aforementioned O.Ps.

The Insurance Company's first contention is that the award passed by the Tribunal in the aforementioned OPs is contrary to law, weight of evidence and probabilities of the case. The deceased persons in the aforementioned OPs are bachelors and in view of the judgment rendered by the Apex Court in *Sarla Verma and others v. Delhi Transport Corporation and another*[1] 50% of the income of the deceased should have been deduced towards their personal expenditure. As the Tribunal deducted 1/3rd of the income of the deceased towards their personal expenditure, the award passed in the aforementioned OPs is liable to be set aside.

The second contention of the Insurance Company is that the amount of compensation awarded to the claimants in the aforementioned OPs is highly excessive and that the Tribunal without there being any proof regarding income and avocation of the deceased in both the cases has assessed their income at Rs.4,000/- per month.

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[1] (2009) 6 SCC 121

These are the main grounds urged by the Insurance Company disputing the quantum of compensation.

As the appeals are filed by the appellant disputing the quantum of compensation awarded by the Tribunal, the only question to be answered is "*whether the amount of compensation awarded to the claimants in the aforementioned OPs is excessive and exorbitant?*"

The fact over which there is no much controversy is that the deceased Narender and Srikanth met with road accident on 30.08.2008 and they were not married by then. There is also no controversy as to the shifting of both the deceased to a nearby hospital immediately after the accident and that one of the deceased Narender died on 31.08.2008 and other deceased Srikanth died on 04.09.2008 while undergoing treatment. The claimants in O.P.No.1132 of 2008 are the mother and unmarried sister of the deceased Narender, whereas the claimants in O.P.No.1133 of 2008 are the mother, father and younger brother of the deceased Srikanth.

As the appellant-insurance company's main contention is on quantum of the compensation, the evidence given by PWs 1 and 2, who are the mothers of both the deceased in the aforementioned OPs needs to be re-appreciated to assess the income of the deceased.

The deceased Narender was aged about 22 years by the date of his death as per the contents of Exs.A3 and A4, the inquest panchnama and the postmortem report. The claimants in O.P.No.1132 of 2008 have contended in their pleading that the deceased Narender was working in Chermas at Gundlapochampally and was earning Rs.5,000/- per month and he is only the bread earner for their family. The father of the deceased Narender pre-deceased him. The evidence given by PW 1 that the deceased was working in Chermas at Gundlapochampally and earning Rs.5,000/- per month prior to his death has not been refuted by the appellant/Insurance Company, though it has come with the contention that the Tribunal knowing very well that there is no satisfactory evidence as to the income of the deceased, assessed the income of the deceased at Rs.4,000/- and the income so assessed is highly excessive.

The evidence given by the mother of the deceased as to the income of the deceased has not been disproved by the Insurance Company. It also has not produced any evidence disproving the age of the deceased mentioned in his postmortem report. Despite the production of any evidence by the insurance company negating the evidence given by PW 1 as to the earning of the deceased by way of working in Chermas at Gundlapochampally, the trial court has assessed his monthly income roughly at Rs.4,000/- per month. This approach of the court below, in my view, is not correct. A daily coolie can easily earn Rs.150/- per day. The Court below ought to have taken the income of the deceased at least at Rs.4,500/- per month considering his income as a daily wage earner. If the monthly income of the deceased is taken at Rs.4,500/-, his annual income comes to Rs.54,000/-.

Accepting the contention of the appellant, if 50% of the said income of the deceased is deducted towards his personal living expenditure, the income which was supposed to be contributed to his family members would come to Rs.27,000/-. If the said amount of Rs.27,000/- is multiplied by the appropriate multiplier '18', the compensation which the claimants are entitled to get under the head of "loss of the income contribution of the deceased to his family" comes to Rs.4,86,000/-. The amount if any, awarded to the claimants by the trial court under the heads of "funeral expenditure" and "loss of estate" amounting to Rs.5,000/- and Rs.10,000/- respectively are added to the compensation arrived under the head of "loss of income contribution of the deceased to his family", the claimants are entitled to get come Rs.5,01,000/- whereas the amount awarded to them by the trial court is only a sum of Rs.4,95,000/-. Therefore, there cannot be any hesitation for this court to hold that there is no merit in the contention raised by the insurance company that the amount awarded to the claimants is on higher side. Therefore, the appeal filed by the appellant-insurance company as against the award in O.P.No.1132 of 2008 fails and the same is hereby dismissed accordingly.

Coming to the legality of the award passed by the Tribunal in O.P.No.1133 of 2008, where a claim made by the legal heirs of the deceased Srikanth is partly allowed by granting compensation of Rs.6,05,000/- is concerned, in this case also, similar contentions are raised by the appellant-Insurance Company.

The Tribunal, though accepted the evidence given by PW 2 as to the avocation of the deceased and earnings, which has not been refuted by the appellant-insurance company, has assessed his income at Rs.4,000/- roughly as no document in proof of income of the deceased was produced. This approach of the court below, in my view, is not correct. A daily coolie can easily earn Rs.150/- per day. The Court below ought to have taken the income of the deceased at least at Rs.4,500/- per month considering his income as a daily wage earner. If the monthly income of the deceased is taken at Rs.4,500/-, his annual income comes to Rs.54,000/-.

Accepting the contention of the appellant, if 50% of the said income of the deceased is deducted towards his personal living expenditure, the income which he was supposed to contribute to his family members would come to Rs.27,000/-. If the said amount of Rs.27,000/- is multiplied by the appropriate multiplier '18' the compensation which the claimants are entitled to get under the head of "loss of the income contribution of the deceased to his family" comes to Rs.4,86,000/-. The amount, if any, awarded to the claimants by the trial court under the heads of "funeral expenditure" and "loss of estate and love and affection" amounting to Rs.5,000/- and Rs.10,000/- respectively are added to, the compensation arrived under the head of "loss of income contribution of the deceased to his family", the amount which the claimants are entitled to get comes to Rs.5,01,000/-. In addition to this, they are entitled to get subsidiary compensation under the head of "medical expenditure and hospitalization charges" amounting to Rs.1,10,000/-, in proof of which they have produced the medical bills. Thus, in total, the claimants are entitled to get compensation of Rs.6,11,000/- whereas the amount awarded to them by the trial court is only a sum of Rs.6,05,000/-. Therefore, there cannot be any hesitation for this court to hold that there is no merit in the contention raised by the insurance company that the amount awarded to the claimants towards compensation is on higher side. Therefore, the appeal filed by the appellant-insurance company as against the award in O.P.No.1133 of 2008 fails and the same is hereby dismissed accordingly.

Accordingly, both the appeals filed by the Insurance Company are hereby dismissed. But there shall be no order as to costs.

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

J.UMA DEVI,J

Date: 28.12.2018
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