

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

M.A.C.M.A.No.2098 of 2009

Between:

Smt.A.Prakashamma and others

..Appellants

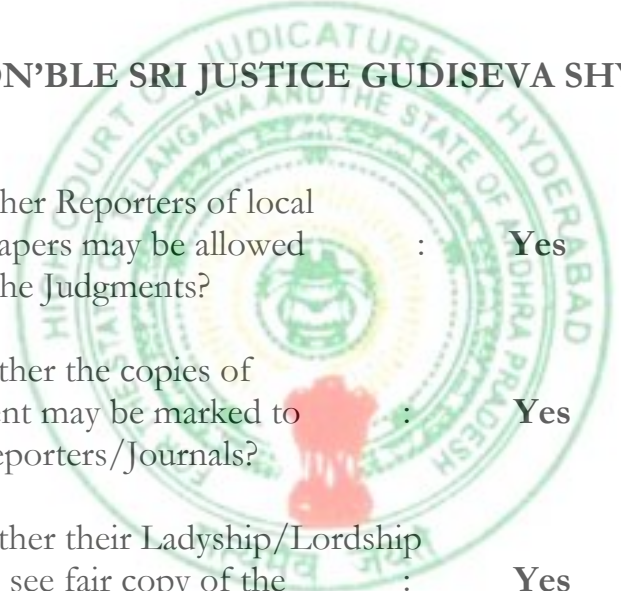
and

E.Venkateswarlu and another

..Respondents

JUDGMENT PRONOUNCED ON: 22nd June, 2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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1. Whether Reporters of local Newspapers may be allowed to see the Judgments? : **Yes**
 2. Whether the copies of judgment may be marked to Law Reporters/Journals? : **Yes**
 3. Whether their Ladyship/Lordship wish to see fair copy of the Judgment? : **Yes**

GUDISEVA SHYAM PRASAD, J

***THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

+M.A.C.M.A.No.2098 of 2009

% 22.06.2018

Smt.A.Prakashamma and others

..Appellants

Vs.

\$ E.Venkateswarlu and another

..Respondents

! Counsel for the appellants: Mr.Vijay Kumar Heroor

Counsel for respondent No.1: --

Counsel for respondent No.2: Mr.Somanchi Venkateswarlu,
standing counsel for United India Insurance Co., Ltd.,

<Gist :

>Head Note:

? Cases referred:

1. (2009) 6 SCC 121
2. 2017 ACJ 2700 SC

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A.No.2098 of 2009****JUDGMENT:**

This appeal arising out of order, dated 20.11.2002, in O.P.No.1166 of 2000 on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal') is filed by the claimants seeking enhancement of the compensation.

2. The appellants/claimants are the legal heirs of one A.Prakash Reddy (hereinafter referred to as 'the deceased'), who died in a motor vehicle accident that occurred on 08.03.2000. Therefore, they filed the aforementioned O.P. under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.12,00,000/- against respondent Nos.1 and 2, who are the owner and insurer, respectively.

3. Brief facts of the case are that on the fateful day i.e., 08.03.2000, while the deceased was going on a scooter from Nagole to Uppal in Ranga Reddy District near Rajya Laxmi Theatre, one lorry bearing No.AP 37 U 1958, being driven in a rash and negligent manner, hit the scooter of the deceased, as a result, the deceased fell down and died on the spot.

4. Before the Tribunal, respondent No.1 – the owner of the offending vehicle, remained *ex parte* and respondent No.2 – the United India Insurance Company Limited – insurer of the lorry, filed counter-affidavit denying its liability. The Tribunal, on consideration of the oral evidence of the witnesses – P.Ws.1 and 2 – appellant No.1 and one S.Jogi Reddy, respectively, and the documents – Exs.A-1 to A-19 and Ex.B-1, has awarded compensation of Rs.7,13,000/- with proportionate costs and interest at 9% per annum from the date of the O.P. till realisation. Aggrieved of the order of the Tribunal, the claimants preferred the present appeal seeking enhancement of the compensation.

5. Heard the arguments of the learned counsel for the appellants and the learned standing counsel appearing for respondent No.2 – Insurance Company and perused the record.

6. The learned counsel for the appellants submits that the compensation awarded by the Tribunal is inadequate and that the Tribunal has not taken correct income of the deceased. The deceased was earning Rs.10,000/- per month, but the Tribunal has wrongly arrived at a conclusion that the deceased was earning Rs.5,000/- per month. On the other hand, the Tribunal has deducted 1/3rd from the income of the deceased towards his personal expenditure, though there are five dependants.

As per the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹, when the dependants are 4 to 6, 1/4th of the income has to be deducted towards personal expenses. That the Tribunal has not awarded future prospects. However, by following the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi**², the appellants are entitled to future prospects at 40% on the notional income.

7. The learned standing counsel for respondent No.2 - Insurance Company submits that there is no basis for assessing the income of the deceased at Rs.10,000/- per month.

8. The testimony of P.W.1 and the documentary evidence reveals that the deceased was running a travel agency and printing business in the name and style of Reddy Tours and Travels and Apex Printers. It is proved by the evidence of P.W.1, by Ex.A-11 – registration certificate, in respect of the business of printing press. But, there is no proof for the income of the deceased at Rs.10,000/- per month. P.W.1 deposed in her cross-examination that the deceased was an income tax assessee for the past ten years, but she did not choose to file income tax returns. Therefore, the Tribunal has taken notional income of the deceased

¹ (2009) 6 SCC 121

² 2017 ACJ 2700 SC

as Rs.5,000/- per month. It is obvious that the deceased was doing business. As the income tax returns of the deceased were not filed, his income cannot be claimed to be Rs.10,000/- per month. However, even in the case of a labourer working in an unorganised sector, notional income will be taken as Rs.3,000/- per month. In the present case, the deceased was doing business, so he can be considered as a skilled labourer and his income can be taken as Rs.5,000/- per month. Thus, the Tribunal's assessment of notional income of the deceased at Rs.5,000/- per month need not be interfered with.

9. It is a fact that the Tribunal has deducted $1/3^{\text{rd}}$ from the income of the deceased towards his personal expenditure. As per the decision in **Sarla Verma** (supra 1), deduction should be at $1/4^{\text{th}}$ in case of five dependants. Since the deceased has five dependants, who are appellant Nos.1 to 5, the Tribunal has erred in deducting $1/3^{\text{rd}}$ from the income of the deceased towards his personal expenses. Therefore, after deducting $1/4^{\text{th}}$ from the annual income of Rs.60,000/-, the contribution of the deceased would be Rs.45,000/- per annum.

10. From the above, since there is no dispute regarding the fact that the deceased was aged 34 years by the date of the accident, as per the decision in **Sarla Verma** (supra 1), the correct multiplier

applicable to the age group of the deceased is '16', but not '17' as was wrongly arrived at by the Tribunal and accordingly, the loss of income comes to Rs.7,20,000/- (45,000 X 16).

11. As regards future prospects, a perusal of the order of the Tribunal shows that it has not awarded any amount. In this regard, it is relevant to extract clauses (iv) and (v) of paragraph 61 of the decision in **Pranay Sethi** (supra 2), which read as under:

“(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v).....

(vi) 'The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.'

In the light of the decision in **Pranay Sethi** (supra 2), the appellants are entitled to an additional amount of 40% towards future prospects, which works out to Rs.2,88,000/- (7,20,000 x 40/100).

12. As seen from the order of the Tribunal, it has awarded Rs.15,000/- towards consortium, Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation charges. These amounts appear to be inadequate and as per the decision in **Pranay Sethi** (supra 2), they are enhanced as shown in the tabulation herein below.

13. On the above analysis, the appellants are entitled to enhanced compensation in the following manner.

Sl.No.	Head of compensation	Compensation awarded by the Tribunal	Compensation enhanced by this Court
1.	Loss of income	6,80,000/-	7,20,000/-
2.	Future prospects	Nil	2,88,000/-
3.	Loss of Consortium	15,000/-	40,000/-
4.	Loss of Estate	15000/-	15,000/-
5.	Funeral expenses and Transportation	2,000/- + 1,000/-	15,000/-
	Total	7,13,000/-	10,78,000/-

14. In the result, the appeal is partly allowed by enhancing the compensation from Rs.7,13,200/- to Rs.10,78,000/- (Rupees ten lakhs and seventy-eight thousand only) along with interest at 7.5% per annum from the date of the O.P. till realization. The respondents shall deposit the compensation amount, as enhanced by this Court, before the Tribunal within a period of one month from the date of receipt of a copy of this judgment. The amount, if any, already deposited by the respondents shall be given credit to.

On deposit of the compensation amount by the respondents, the appellants are entitled to withdraw the same without furnishing any security.

15. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

22nd June, 2018

Note: L.R. copy to be marked.
(B/o)
GHN

