HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No. 338 of 2013

ORDER:

The present appeal came to be filed under Section 173 of Motor Vehicles Act, challenging the order dated 11.12.2012 passed in O.P.No. 381 of 2010 passed by the Motor Accident Claims Tribunal III Additional District Judge (FTC), Asifabad.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in the O.P.

3. The petitioners filed O.P.No. 381 of 2010 seeking compensation of Rs.20,00,000/- for the death of the deceased-Azam Khan in a motor vehicle accident, which occurred on 24.07.2010 at about 11 a.m., near Petrol Pump, Hyderguda, Hyderabad, due to rash and negligent driving of the driver of APSRTC bus, bearing No. AP-11Z-885.

4. On 24.07.2010, at about 11 a.m., the deceased by name Azam Khan was proceeding on his motor cycle. When he reached near the Petrol Pump situated at Hyderguda, Hyderabad, all of a sudden, APSRTC bus bearing No. AP-11Z-885 of Musheerabad Depot driven by its driver in rash and negligent manner, came and dashed

the motor cycle driven by the deceased, due to which he received severe injuries all over his body, and died on the spot. On a report, a case in Crime No. 286 of 2010 was registered by Narayanguda Police Station under Section 304-A IPC against the driver of the said APSRTC Bus.

5. The contention of the petitioners is that the deceased, who was aged about 29 years at the time of accident, was hale and healthy and used to earn Rs.20,000/- per month as Manager in a private corporate company at Hyderabad. It is said that he used to contribute his entire earnings to the welfare and benefit of the petitioners. The petitioners would contend that due to untimely death of the deceased, their entire family are undergoing great mental shock both physically and mentally, as the deceased was the only earning member in the family. It is stated that the respondent herein is the owner of the bus which caused the accident and as such, he is vicariously liable to pay compensation to the petitioners.

6. A counter came to be filed by the respondent, denying the contents of the petition. It is stated that the accident did not happen in the manner suggested by the petitioners and that a false case has been registered by the Narayanaguda Police against the driver of the bus. The respondent also denied the age and avocation of the deceased. The respondent also stated that the accident occurred only due to the negligence of the deceased.

7. Basing on the pleadings in the petition and counter, the claims tribunal framed the following issues:

1. Whether the driver of the APSRTC bus is responsible for the incident?
2. Whether the claim made by the petitioners is just and true?
3. To what relief?

8. In order to prove their claim, the claimants examined PW1 and got marked Exs.A1 to A15. No evidence was adduced on behalf of the respondent.

9. Considering the evidence on record, the claims tribunal awarded compensation of Rs.25,30,000/- in favour of the petitioners 1 and 2 and against the respondent with simple interest @7.5% per annum from the date of petition till date of realization. Challenging the same, the present appeal came to be filed by the APSRTC.

10. Learned Standing Counsel for APSRTC would contend that the income of the deceased and the multiplier adopted by the respondent are just and proper. She would submit that in view of the recent judgment of the Apex Court in *National Insurance Co.Ltd. Vs.Pranaysethi and others*[1], the petitioners are not entitled for the amount awarded towards loss of dependency. The same is disputed by the learned counsel for the petitioners.

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[1] SLP(Civil) No. 25590/14

11. The undisputed facts are that the petitioner is a bachelor aged 29 years, working in a private company. The learned standing counsel for the respondent did not dispute the manner in which the incident took place and also the negligence of the driver of the RTC bus in causing the incident. She only disputed the manner in which the calculations were made in respect of the compensation awarded to the petitioners.

12. A perusal of the material on record shows that loss of future prospects was calculated @ 50% by adopting the judgment of the Hon'ble Supreme Court in *SARLA VARMA*'s case. The learned Standing Counsel would contend that since the deceased was a private employee, he is entitled only for 40% towards loss of future prospects, in view of the judgment in *National Insurance Co.Ltd. Vs.Pranaysethi and others*,. If 40% is calculated towards loss of future prospects, the total amount would be Rs.23,100/-, i.e., 6,600/- (40% of 16,500) plus Rs.16,500/-. Since the deceased is a bachelor, his personal living expenses shall be 50% of the said amount, i.e., Rs.11,550/-. Adopting multiplier 17, his total loss of earnings would be Rs.11,550/- x 12 x 17, which comes to Rs.23,56,200/-. Since he is a bachelor, the deceased is not entitled for any loss of consortium. As per the judgment of the Apex Court in *Pranaya Sethi's* case, the total loss under conventional heads would be Rs.30,000/-. Therefore, the total loss of earnings would come to Rs.23,86,000/-. Therefore, the learned Standing Counsel for the respondent would contend that

the trial court erred in awarding an amount of Rs.25,30,000/-, i.e., Rs.1,44,000/- more than what the petitioners are entitled to.

13. It is to be noted that the difference in calculation of the amount of loss in earnings arose with regard to the loss of future prospects. The trial court took into account 50% of the income as loss of future prospects, but, in view of the judgment in *Pranaya Sethi's* case, which is later in point of time, it is stated that the deceased would be entitled to only 40% towards loss of future prospects, as he was a private employee.

14. At this stage, we perused the salary certificate issued by the employer of the deceased, wherein his income was shown at Rs.20,423/-, which is based on Ex.A15. Apart from that, the documents which are placed on record would show that the deceased is a Graduate in Commerce with Diploma in Computer Applications and AutoCAD. Therefore, he appears to be technically qualified. Since no reasons are given as to why the salary of the deceased was reduced from Rs.20,423/- to Rs.16,500/-, we are of the opinion that the compensation has to be calculated on the amount of Rs.20,423/- or Rs.20,000/- as claimed by the claimants.

15. As per the record, the age of the deceased is 29 years on the date of accident and as he was working as a private employee, and in view of the judgment of the Apex Court in *National Insurance Co.Ltd. Vs.Pranaysethi and others,* passed in SLP(Civil) No. 25590/14 decided on 31.10.17., 40% for loss of future prospects on

his personal income has to be added. Hence the claimants are entitled to the following amounts:

Salary income of the deceased	:	Rs. 20,000/-
40% future prospects	:	Rs. 8,000/-
		Rs. 28,000/-
50% towards personal Expenditure (28,000/- x 50%)	:	Rs. 14,000/-
Multiplier adopted is 17 (Rs.14,000/- x 12 x 17)	:	Rs.28,56,000/-

10. Apart from the above, in view of the judgment of the Apex Court in *National Insurance Co.Ltd. Vs.Pranaysethi and others(supra)*, the claimants are entitled to Rs.30,000/- towards conventional heads namely loss of estate (Rs.15,000/-) and funeral expenses (Rs.15,000/-). As already stated, since the deceased is a bachelor, he is not entitled for any loss of consortium.

11. Thus, in all claimants are entitled to Rs.28,96,000/- (Rs.28,56,000/- + Rs.30,000/-). At this stage, learned counsel for the appellant placed on record the judgment of this Court in *The National Insurance Company Limited Vs. Mohd.Zakeer and others*[2], wherein, this Court dealt with a situation as to whether there could be an enhancement of compensation in the appeal filed by the Insurance Company. Relying upon the Judgment of Apex Court, this Court held as under:

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[2] 2014 (2) ALD HC 468

> "In *Aitipamula Kalavathi @ Kalamma Vs. Southern Road Ways Limited and another*, a learned single Judge of this Court relying on the decisions reported in Oriental Insurance Company Vs. R.Swaminathan and Ranjana Prakash and others Vs. Divisional Manager and another, held that compensation amount cannot be increased beyond the amount awarded by the Tribunal in the appeal filed by the insurance company. It was held that even under Order 41 Rule 33 of C.P.C., the appellate Court cannot grant larger or higher relief than claimed. It must be mentioned here that in another decision reported in National Insurance Company Limited, Nizamabad Vs. Saheb @ Gdivan Saheb and others, another learned single Judge of this Court also expressed similar view stating that prayer for enhancement of compensation cannot be accepted when the claimant has not preferred appeal challenging the adequacy of compensation.
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> Coming to the present case, admittedly the claimants have not preferred any appeal and on the other hand, the insurance company has only preferred the appeal questioning the quantum of compensation. In view of the above citations, compensation cannot be enhanced more than what was awarded by the Tribunal."

12. In view of the findings and the judgments referred to above; as the claimants have not preferred any appeal seeking enhancement of compensation and as the Respondent-APSRTC has only preferred the appeal questioning the quantum of compensation, the appeal is dismissed, confirming the quantum

of compensation awarded by the tribunal. However, no order as to costs in the appeal.

13. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

14.06.2018
DMG