THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.816 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 09.09.2004 passed in O.P.No.747 of 2002 by the Chairperson, Motor Accidents Claims' Tribunal-cum-I Additional District Judge, Karimnagar, granting compensation of Rs.6,00,000/- as against the claim of Rs.8,00,000/-.

Brief facts of the case are that on 01.01.2002 the crime jeep bearing No.AP-15-V-3101 dashed the deceased when he was standing on the road side to catch a vehicle to attend his duty at Singareni Collieries Company Limited. Due to fatal injuries received in the said accident, he succumbed to injuries on the way to hospital. The dependents of the deceased, who are seven in number, filed claim petition stating that at the time of accident the deceased was hale and healthy, aged 40 years, and was earning Rs.6,476/- per month and contributing the same to his family and being an employee he used to get annual increments and other benefits. Thus, under various heads the claimants, who are the wife, children and mother of the deceased respectively, filed claim petition seeking compensation of Rs.8,00,000/-.

The first respondent remained *ex parte*. Respondents 2 and 3 filed counters denying the averments of the claim petition. Based on the pleadings of both the parties, the Tribunal framed the following issues:

(1) Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.AP-15-V-3101 by R.1?

(2) Whether the petitioners are entitled to recover compensation and if so what amount and from whom?

(3) To what relief?

On behalf of the appellants, PWs 1 to 3 were examined and Exs.A.1 to A.10 were got marked. On behalf of the third respondent, Ex.B.1 was marked but no oral evidence was adduced.

The Tribunal based on the evidence available before it, more particularly, the evidence of P.W.2, who is the injured and eye witness to the accident, came to the conclusion that the accident was occurred due to rash and negligent driving of the driver of the crime vehicle and due to fatal injuries received in the said accident, the deceased succumbed to injuries on his way to hospital. As no contra evidence was adduced by the respondents, the Tribunal decided issue No.1 in favour of the appellants. The Tribunal had taken the monthly income of the deceased at Rs.5,000/-. After deducting 1/3rd therefrom towards personal expenses, the loss of future dependency was arrived at Rs.5,59,944/-. That apart, the Tribunal awarded Rs.10,000/- to the first appellant towards loss of consortium and Rs.5,000/- each to appellants 2 to 7 towards loss of love and affection. Thus, in all the Tribunal granted compensation of Rs.5,99,944/- rounded off to Rs.6,00,000/- to the appellants-claimants.

Sri D.Bhaskar Reddy, learned counsel for the appellants, would contend that the Tribunal grossly erred in taking the monthly salary of the deceased as Rs.5,000/- even though the deceased was working as a General Mazdoor in Singareni Collieries Company Limited and getting the salary of Rs.6,476/- per month and the same was supported by the evidence of P.W.3, who is working as a Welfare Officer in Singareni Collieries Limited, Bhupalpally. He would further contend that the Tribunal also erred in deducting 1/3rd towards personal expenses when the claimants are more in number and the Tribunal ought to have deducted 1/5th from the earnings of the deceased towards personal expenses. Further, as the deceased was aged '40' years as per Ex.A.3-Post Mortem report, the appropriate multiplier would be '15' as per the ratio laid down in ***Sarla Verma and others vs. Delhi Road Transport Corporation and another***[1]. He would further contend that as the petitioner was on a fixed job, as per the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***[2], the claimants are entitled for 25% of annual dependency towards loss of future earnings. The Tribunal, in all, granted only Rs.6,00,00/- which is far less than the amount claimed. Hence, he seeks enhancement of the compensation amount.

Sri Ramchander Rao and Sri B.Raj Kiran, learned counsel, appearing for the respondents would contend that there is no irregularity or illegality committed by the Tribunal in awarding compensation of Rs.6,00,000/- and the Tribunal has rightly taken the monthly income of the deceased at Rs.5,000/- without therebeing any contra evidence.

Having heard the rival contentions of the counsel, it is found that the Tribunal grossly erred in taking the monthly salary of the deceased at Rs.5,000/- instead of Rs.6,476/- as per Ex.A.7-salary certificate. The evidence of P.W.3, who is the Welfare Officer of the Singareni Collieries Limited where the deceased was working at the

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[1] (2009) 6 SCC 121
[2] 2017(6) ALD 170 (SC)

time of his death, is also to the effect that the deceased was paid Rs.7,041-52 ps for the month of December, 2001. Hence, there is no justification for the Tribunal in taking the monthly salary of the deceased at Rs.5,000/- ignoring Ex.A.7 and the evidence of P.W.3. Thus, the monthly salary of the deceased can be safely taken at Rs.6,476/- and the annual income of the deceased would be at Rs.77,712/-. Further, since the appellants-claimants, who are the dependants of the deceased, are 7 in number, in view of the ratio laid down in ***Sarla Verma case (1 supra)*** the Tribunal ought to have deducted $1/5^{th}$ from the salary of the deceased towards personal expenses. Further, as the deceased was aged about '40' years even as per post-mortem report, the Tribunal ought to have applied the multiplier of '15' instead of '14' in view of the ratio laid down in ***Sarla Verma case (1 supra)*** as the deceased comes within the age group of 40-45 years. If $1/5^{th}$ is deducted from the salary of the deceased towards personal expenses and the multiplier of '15' is applied, the loss of dependency would comes to Rs.9,32,550/-. That apart, as contended by the learned counsel for the claimants, as the deceased was aged about '40' years, the claimants are entitled for 25% towards loss of future prospects as per the ratio laid down in ***Pranay Sethi case (2 supra)***, which comes to Rs.2,33,138/- (Rs.9,32,550 X 25%). Further, the appellants are entitled for Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium as per the ratio laid down in ***Pranay Sethi case (3 supra)***. Thus, in total, the appellants are entitled for Rs.12,35,688/- towards compensation.

Though the compensation claimed by the claimants before the Tribunal was only Rs.8,00,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others*[3]*,*** in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.12,35,688/- along with interest at 7.5% per annum from the date of petition till the date of deposit and proportionate costs. The respondents 1 to 3 are jointly and severally liable to pay the compensation to the claimants within one month from the date of receipt of a copy of this order. Out of the compensation amount the first claimant is entitled for Rs.6,35,688/- and claimants 2 to 7 are entitled for Rs.1,00,000/- each. The appellants-claimants are permitted to withdraw their respective share amount as and when the deposit is made. However, the share amount of the minor i.e. claimant No.6 shall be kept in fixed deposit in any nationalized bank till she attains majority. Further, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.4,35,688/-.

Accordingly, the appeal is allowed as stated supra.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

12th October, 2018
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[3] (2003) 2 SCC 274