HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2719 OF 2016

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred under Section 173 of Motor Vehicles Act, 1988, by the insurer viz., Shriram General Insurance Company Limited, against the order and decree dated 27.11.2015 in O.P. No.41 of 2014 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Nizamabad, questioning the quantum of compensation awarded and deduction of 1/5th amount towards personal living expenses instead of deducting 50% of the earnings as the deceased in the instant case died in unmarried status.

2. The Tribunal having deliberated on issue Nos.1 to 3, in the light of the evidence adduced by respondent Nos.1 to 6 herein - claimants through PWs.1 and 2 and Exs.A-1 to A-5 and the evidence let in by the contesting respondents as RW.1 and Ex.B-1, arrived at the finding on issue No.1 that due to rash and negligent driving of the driver of the D.C.M. Van bearing No.AP-28-Y-4161, the accident occurred and, thus, fixed joint and several liability on respondent Nos.1 and 2.

3. On issue No.2, the Tribunal taking the age of the deceased as 21 years based on Exs.A-3 and A-4, which are certified copies of inquest and postmortem examination reports, respectively, and

disagreeing with the stand of the claimants that the deceased was working as driver and also vegetable vendor earning Rs.20,000/- per month, fixed his income at Rs.6,000/- per month and deducted 1/5th therefrom towards his personal living expenses, and applying multiplier factor '17', arrived at Rs.9,79,200/- towards loss of dependency. Besides the same, the Tribunal has also granted Rs.1,00,000/- towards loss of consortium and loss of estate and Rs.50,000/- each to claimant Nos.1 and 5 towards loss of love and affection besides Rs.25,000/- towards funeral expenses, and, thus, awarded a total amount of Rs.12,04,200/- towards compensation with interest at 7.5% per annum making respondent Nos.1 and 2 jointly and severally liable to pay the same.

4. The learned counsel for the appellant - insurer would submit that the Tribunal completely went wrong in deducting 1/5th towards personal living expenses of the deceased though, the law laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1] makes it permissible only to the extent of 50% towards personal and living expenses where a person dies in unmarried status.

5. The learned counsel would also submit that there is no proof being placed by the claimants to show that the deceased was earning Rs.6,000/- per month and, thus, without any evidence, the Tribunal went wrong in fixing income of the deceased at Rs.6,000/- per month

[1] 2009 (6) SCC 121

and, therefore, ought to have rejected the stand of the claimants that the deceased was an auto-rickshaw driver and also a vegetable vendor. He has no licence even produced to show that the deceased was a professional auto-rickshaw driver.

6. The learned counsel for the claimants, on the other hand, would support the award passed by the Tribunal.

7. There is patent error committed by the Tribunal. It is not in dispute that the deceased died in unmarried status at the age of 21 years. The law laid down by the Hon'ble Supreme Court is, in case of death of a person in unmarried status, permissible deduction is 50% towards his personal and living expenses and the remaining 50% to be taken as his contribution to the family. Therefore, deduction of $1/5^{th}$ towards personal living expenses of the deceased is totally wrong. The learned Tribunal, somehow, viewed that there are more than four dependants on the deceased forgetting for a moment that the deceased died in unmarried status.

8. Therefore, 50% deduction is to be applied. Adverting to the fixation of Rs.6,000/- monthly earnings, though, there is no basis, still, since accident occurred in 2012 year, it cannot be said that income of the deceased was less than that. When the income of Rs.6,000/- per month is taken or the annual income of Rs.72,000/- is considered, when 50% is deducted towards personal living expenses of the

deceased, the contribution works out to Rs.36,000/- per annum. Since the deceased was 21 years, the relevant multiplier factor is '18' as provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma's Case[1].** When multiplier factor '18' is applied, it works out to Rs.6,48,000/-. Thus, instead of Rs.9,79,200/- arrived at by the Tribunal towards loss of dependency, the claimants are entitled to Rs.6,48,000/- (Rupees six lakhs forty eight thousand only).

9. The Tribunal, somehow, even granted Rs.1,00,000/- towards loss of consortium though, the deceased died in unmarried status, and, as such, the same is set aside. The Tribunal has also awarded Rs.50,000/- each to respondent Nos.1 and 5 towards loss of love an affection. In **National Insurance Co. Ltd. v. Pranay Sethi[2],** the Hon'ble Supreme Court has not provided any compensation to be awarded towards this particular head. Therefore, even the amount of Rs.50,000/- granted by the Tribunal is set aside. The amount of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/- as per the law laid down by the Hon'ble Supreme Court in **Pranay Sethi[2].**

10. Thus, the claimants are totally entitled to an amount of Rs.6,63,000/- (Rupees six lakhs sixty three thousand only) as against

[2] 2017ACJ 2700

Rs.12,04,200/- awarded by the Tribunal and the same is accordingly awarded with interest at 7.5% per annum as granted by the Tribunal.

11. Out of the total compensation, claimant No.1, who is mother of the deceased, is entitled to Rs.2,00,000/- (Rupees two lakhs only), claimant Nos.3, 4 and 5, who are sisters of the deceased, are entitled to Rs.1,20,00/- (Rupees one lakh twenty thousand only) each, and claimant No.6, who is the father of the deceased, is entitled to Rs.1,03,000/- (Rupees one lakh three thousand only).

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part reducing the compensation as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present Civil Miscellaneous Appeal stand closed.

A. SHANKAR NARAYANA, J

April 13, 2018.
MGR/PV