HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE MRS. JUSTICE T.RAJANI

M.A.C.M.A.No. 1034 of 2013

JUDGMENT:

Assailing the order and decree dated 03.12.2012 passed in O.P.No. 233 of 2011 passed by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Madanapalle, the Insurance Company preferred this appeal under Section 173 of the Motor Vehicles Act.

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

3. The 1st and 2nd claimants herein, i.e., the wife and daughter of the deceased Venkataramana Reddy filed a petition under Section 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.35,00,000/- with interest and costs, for the death of Venkataramana, in a motor vehicle accident that occurred on 25.07.2011 at 10 p.m. at Pothalacheruvu cross.

4. The facts in issue, are as under:

On 25.07.2011, the deceased, after attending his duties, was returning in an auto bearing registration No. AP 03 X 4341, and when the said auto reached Pothalacheruvu crossroad, a car bearing registration No. AP 03 AL 5764, driven by its driver in a rash and negligent manner, dashed against the auto, as a result of which the deceased received fatal injuries. Immediately, he was shifted to Government Hospital, Piler, and from there to Vellore Hospital, but, on the way, he died.

5. It is stated that the deceased was hale and healthy at the time of the accident, and that he was working as a Teacher in M.P.P.School, Sivarapuvandlapalli, Pulicherla Mandal, drawing a salary of Rs.20,798/- per month. It is stated that the 1st claimant, who is the wife of the deceased, lost her husband at a tender age, depriving her of marital life and the 2nd claimant, who is the daughter of the deceased, lost her father at a very young age, thereby depriving her of love, affection and future guidance. Having regard to the manner in which the accident took place, it is stated that the 1st and 2nd respondents are jointly and severally liable to pay compensation.

6. Notices were served on the 1st and 2nd respondents. The 1st respondent remained *ex parte,* while the 2nd respondent filed a written statement, denying the relationship between the petitioner and the respondent Nos. 3 and 4, and also the age, occupation and income of the deceased. It is stated that the accident in question took place due to the rash and negligent driving of the driver of the auto, and as such, the Insurance Company is not liable to pay any compensation. It is further stated that the petition is bad, for non joinder of necessary parties, i.e., the owner and insurer of the auto, which was responsible for the accident. It is further stated

that since the claim made is contrary to the conditions of the insurance policy, the claimants are not entitled for compensation.

7. Basing on the above pleadings, the trial court framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of Car bearing registration No. AP 03 AL 5764 which resulted in the death of the deceased by name Bathena Venkataramana Reddy?

2. Whether the claimants are entitled for compensation? If so by whom and to what amount?

3. To what relief?

8. In order to prove their claim, the claimants examined PWs 1 to 3 and got marked Exs.A1 to A10. The respondents 3 and 4 examined RW1, while the 2nd respondent got marked Ex.B1.

9. Considering the evidence on record, the claims tribunal awarded compensation of Rs.31,83,306/- together with proportionate costs and interest @ 9% per annum from the date of filing of the petition till the date of realization. Challenging the same, the present appeal came to be filed by the Insurance Company.

10. The main ground urged by the Insurance Company is that the trial court erred in not deducting income tax and professional tax from the salary of the deceased, while computing his income. According to the counsel for the Insurance Company, since the accident took place in the year 2001, the tax liability is NIL for the

income ranging from 0 to Rs.1,60,000/- and 10% for the income ranging from Rs.1,60,000/- to Rs.3,00,000/-. He further contends that as the income earned by the deceased would fall within the bracket of Rs.1,60,000/- to Rs.3,00,000/-, the court below should have deducted 10% towards income tax, coupled with a sum of Rs.2,400/- per annum towards professional tax. He further contends that since the 3rd respondent, who is the father-in-law of the 1st petitioner, retired as Conductor in R.T.C., and is getting pension, the court below should have deducted only 1/3rd towards personal and living expenses, and not 1/4th, as done.

11. However, the learned counsel for the claimants contends that the finding of the trial court warrants no interference. She pleads that the claimants are entitled to Rs.70,000/- towards conventional heads, which fact is not seriously disputed by the learned counsel for the Insurance Company.

12. The point that arises for consideration is whether the trial court was right in taking the income of the deceased @ Rs.19,312/-, ignoring income tax, while calculating the compensation.

13. Since the manner in which the accident took place is not challenged by the Insurance Company, though the appeal is filed by them, we shall delve into the aspect of quantum of compensation only.

14. The employment and salary particulars of the deceased as on the date of the accident, were produced by PW3. It is the evidence of PW3, who was working as Mandal Educational Officer, Pulicherla that the deceased was working as Secondary Grade Teacher at Mandal Praja Parishad Primary School, Suvvarapuvaripalle, Pulicherla Mandal and drawing a salary of Rs.20,798/- per month, as per the entries in the Service Register. Ex.A8 is the salary certificate of the deceased, while Ex.A9 is the attested copy of the Service Register pertaining to the deceased. The evidence of PW3, coupled with Exs. A8 and A9, establish the pay of the deceased as Rs.20,798/-. However, the trial court erred in taking the income of the deceased at Rs.19,312/- instead of Rs.20,798/-, as per Ex.A8, and no deductions have been made in the income of the deceased towards income tax and professional tax.

15. Having regard to the oral and documentary evidence, the income of the deceased has to be taken as Rs.20,798/- per month, and deductions shall be made @ Rs.200/- per month towards professional tax and @ 10% towards income tax, as per the slab rates of income tax prevalent during the year 2001-2002.

16. The learned counsel for the appellants would contend that though there are four claimants, the deduction of 1/4th towards personal expenses may not be proper, as the 3rd respondent is not dependent on the deceased. He relied upon the evidence of the 3rd respondent (RW1), who is none other than the father of the

deceased, in support of his plea. RW1, in his evidence, deposed that he is a pensioner and is getting pension. It would be appropriate to refer to the admissions made by RW1 in his cross-examination, which are as under:

> "It is not true to suggest that I never depended upon my deceased son Venkataramana Reddy and as I am drawing a sum of Rs.8,000/- per month as pension, hence I am not entitled for any compensation."

17. In view of the evidence of RW1, the deduction towards personal expenses should be 1/3rd, and not 1/4th, as awarded by the trial court.

18. At this stage, it is stated that the deceased was aged about 42 years as on the date of the accident. Applying the ratio laid down in *NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS*[1], 30% of the amount earned would be added towards future prospects, and in view of the judgment of the Apex Court in *SARLA VERMA v. DELHI TRANSPORT CORPORATION*[2], the suitable multiplier would be (14). Further, the claimants are also entitled to a sum of Rs.70,000/- towards conventional heads, in view of the judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS (1 supra)*.

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[1] (2017) ACJ 2700
[2] (2009) 6 SCC 121

19. Hence, the claimants are entitled to the following amounts:

		Rs.
Salary	:	20,798/-
Less: Professional Tax	:	200/-
		20,598/-
Less: Income Tax	:	2,060/-
		18,538/-

		Rs.
Salary	:	18,538/-
Add: 30% future prospects	:	5,561/-
Total:		24,099/-
Less: $1/3^{rd}$ towards personal expenses (24,099/- x 1/3)	:	8,033/-
		16,066/-

Multiplier adopted is 14

(Rs.16,066/- x 12 x 14) : Rs.26,99,088/-

20. Thus, in all, the claimants are entitled to Rs.27,69,088/- (Rs.26,99,088/- + Rs.70,000/-)(Rupees Twenty seven lakhs sixty nine thousand and eighty eight only) with simple interest @9% per annum from the date of petition till date of realization.

21. Accordingly, the appeal is disposed of. However, no order as to costs in the appeal. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.RAJANI

25.07.2018
DMG