**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**MACMA No.2834 OF 2018**

**JUDGMENT:**

This appeal is filed under Section 173 of the Motor Vehicles Act challenging the Award dated 17.05.2018 passed by the Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad awarding compensation of Rs.23,43,000/- together with proportionate costs and interest @ 7.5% per annum.

Respondents 1 to 5 filed petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.25 lakhs for the untimely death of Ravikanti Srinivas Reddy @ Raikanti Sreenivas Reddy on 04.12.2013 at about 09.30 while he was proceeding on motor cycle bearing No.TS 03 EA 8485, as a pillion rider along with his friend from Jangaon towards Hyderabad, when the vehicle reached near Chinnakandukur Bus Stop at the outskirts of Channakandukur Village, Yadagirigutta Mandal, Rachakonda District, TSRTC bus bearing No.AP 29 Z 1933 driven by its driver in rash and negligent manner at high speed, hit the motor cycle, as a result of which, Srinivas Reddy fell down on the road and the bus ran over the head of the Srinivas Reddy, which lead to instantaneous death at the spot and a Crime No.280 of 2016 was registered for the offences punishable under Sections 304-A and 337 IPC with Yadagirigutta Police.

It is the contention of respondents 1 to 5 that the deceased was hale and healthy and an agriculturist raising vegetables, spices and cotton in his agriculture land admeasuring Ac.3.1/2 guntas and also doing real estate business, earning Rs.20,000/- per month and was contributing the same to his family. On account of sudden accidental death, respondents 1 to 5 lost their support of income. It is also contended that the deceased Srinivas Reddy was aged 40 years and on account of untimely death of

Srinivas Reddy, respondents 1 to 5 put to serious loss and claimed compensation of Rs.25 lakhs.

The appellant disputed the occurrence of accident due to rash and negligent driving of the driver of the bus and also disputed the income of the deceased Srinivas Reddy from agricultural land and other source of income including the real estate business and requested to dismiss the petition.

During enquiry, on behalf of the claimants, PWs.1 to 3 were examined and marked EXs.A.1 to A8. None were examined on behalf of the appellant herein and no documents were marked.

Upon hearing argument of both counsel, the Tribunal considered the evidence of witnesses and the documents produced before the Court, concluded that the deceased was an agriculturist and no evidence was produced that the deceased was carrying on real estate business, receiving any income from such business. The Tribunal, according to minimum wage standards, the income of the deceased was fixed at Rs.12,000/- per month and added 40% towards future prospects to the said Rs.12,000/-, which comes to Rs.16,800/- per month and fixed compensation by applying multiplier 15, taking into consideration of age of the deceased.

The main ground urged before this Court is that in the absence of proof of loss of any income, agricultural land remains with the legal heirs being successors of the deceased Srinivas Reddy. The loss would be only supervisory charges. Therefore, fixing income of the deceased Srinivas Reddy at Rs.12,000/- per month is erroneous on the face of record and contrary to the principles laid down in **State of Haryana and another v Jasbir Kaur and others**[1] and addition of 40% towards future prospectus, is contrary to the principles laid down by the Constitution Bench judgment of the Apex Court in **National Insurance Company Limited v Pranay Sethi**

[1] (2003)7 SCC 484

**and others**[2] and thereby, loss of income assessed by the Tribunal and future prospectus added to the income of the deceased is erroneous and requested to set aside the award passed by the Tribunal.

During hearing, learned counsel for the appellant drawn the attention of this Court to the judgments referred supra and mostly relied on Para 8 of the judgment in **Jasbir Kaur's case** referred supra and para 61 of the judgment of the Constitution Bench in **Pranay Sethi's case** referred supra and requested to pass appropriate order in this appeal.

Where as learned counsel for respondents 1 to 5 supported the award passed by the Tribunal while placing reliance on the judgment of the Madras High Court in **New India Assurance Co.Ltd v Kayalvizhi and others**[3] drawing attention of this Court to paras 13 and 14 of the judgment. Learned counsel contended that the Court can make guess work, fix income of the deceased, award just compensation to the claimants and he also drawn the attention of this Court to the judgment of the Apex Court in **Hem Raj v Oriental Insurance Co. Ltd and others**[4] where it was held that the Court can fix future loss at 50% for the person after discussing the judgment in **Pranay Sethi's case** referred supra and requested to dismiss the appeal.

Considering rival contentions and material available on record, the point for consideration is:

> ***Whether the deceased Srinivas Reddy was an agriculturist and if so, what will be the loss of contribution to the family on account of his untimely death; AND***
>
> ***Whether the Tribunal is competent to fix minimum wage at Rs.12,000/- per month adding 40% as future prospectus be sustained?***

---

[2] AIR 2017 SC 5157
[3] 2010 ACJ 2530
[4] 2018 ACJ 5

**POINTS:**

The main contention of the appellant is that the deceased Srinivas Reddy was only an agriculturist and in the event of death of agriculturist, the loss would be only supervisory charges and not the income, which he is expected to earn by agriculture and the income which he earned during his life time cannot be taken as income and contribution to the family. The Tribunal did not accept the income of the deceased from the real estate business as no proof is filed before the Tribunal to substantiate their case that the deceased Srinivas Reddy was carrying on real estate business and such finding is not challenged before this Court.

Learned counsel for the appellant limited his submission to the extent of agricultural income and the finding recorded by the Tribunal in para 9(a) of the award applying the minimum wage standard to an agriculturist. Even if the case of the appellant is accepted when the deceased was an agriculturist, the land will remain with the legal heirs being the successors of the property and they can cultivate the land raising different crops. But the loss would be only supervisory charges and not loss of entire income. The loss would be only the supervisory charges and fixed supervisory charges at Rs.1,000/- per month by the Court in **United India Insurance Company v G.Rajeshwar**[5] following the principle in **Jasbir Kaur and others's** case referred supra, the Court made it clear in para 8 that when the deceased was an agriculturist, the land possessed by the deceased will remain with the claimants as his legal hairs. There is, however, a possibility that the claimants may be required to engage persons to look after the agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Furthermore, there was no material before the

[5] 2009(4) ALD 591

Tribunal to arrive at the figure and no reason has been indicated to arrive such figure. In the light of the material available on record, the loss of supervisory income was estimated at Rs.3,000/- per month fixing his income at the same time.

Learned counsel for respondents 1 to 5 drawn the attention of this Court to the Division Bench judgment of the Madras High Court in **Kayalvizhi's** case referred supra, where similar question came up before the Court referring **Jasbir Kaur's case** in para 13, it was held as follows:

> *There can be no golden rule applicable to all cases for measuring the value of human life or limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the back ground of 'just' compensation which is the pivotal consideration. Thoughby the use of the expression ' which appears to it to be just', a wide discretion is vested upon the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, guesses and arbitrariness. The expression 'just' denotes equitability, fairness, reasonableness and non arbitrariness."*

and in para 14 it was held as follows:

> *Tribunal has made an observation that from agricultural and from business, deceased would have earned the income of Rs.25,000/- to RS.30,000/- per month. Upon analysis of evidence, the Tribunal has not chosen to fix the monthly income nor has given any deduction for personal expenses. Having regard to the age of the deceased(28 years) and income from agricultural land and from business, income of the deceased is fixed at Rs.18,000/- per month. After deducting 1/3rd for personal expenses, contribution to the family is fixed at Rs.12,000/- per month.*

But this principle cannot be applied in view of the judgment of the Apex Court in **Jasbir Kaur's** referred supra and the judgment of our High Court since it is not binding precedent, having possessive value. Therefore, I am not inclined to follow the principle laid down by the Madras High Court in **Kayalvizhi's** case referred supra. Hence, the loss of income of the deceased Srinivas Reddy should be estimated, taking into consideration of circumstances as the loss was only supervisory charges, not otherwise. In **Jasbir Kaur's case** referred supra, the Court fixed the monthly income of the deceased at Rs.3,000/- as the claimants have to incur amount for cultivating the land and therefore, the supervisory charges are estimated at Rs.3,000/- per month in the year 2003, but taking in to consideration the subsequent changed circumstances, there is little more increase in the supervisory charges as on the date of accident. As such, taking into consideration, the passage of time, the supervisory charges for agricultural land owned and possessed by the deceased Srinivas Reddy is estimated at Rs.5,000/- per month taking into consideration of the present cost of living and price index, holding that fixation of monthly income at Rs.12,000/- is based on minimum wage standard, which is not based on any data is erroneous and the same is hereby set aside. Accordingly, the income of the deceased was fixed at Rs.5,000/- per month towards loss of supervisory charges.

The other ground raised by learned counsel for the appellant is that when the deceased Srinivas Reddy was aged 40 years, addition of future prospectus must be at 25%, but not at 40%. In **Pranai Sethi's case** referred supra at para 61(4), held that for the death of a person aged 40 to 50 years, additional 25% towards future prospectus shall be added. In the present case, the deceased was aged 40 years, according to the allegations made in the claim petition. Even if the age of the deceased Srinivas Reddy is accepted as it is from the **Pranai Sethi's case** referred supra, additional 25% towards future prospectus to be added. But in the later judgment of the Division Bench of the Apex Court in **Hem Raj's** case referred supra, the Court took a different view and held that the standardisation may be increased (sic) based on presumption but when there is an actual evidence led to the satisfaction of the Tribunal/Court that future prospects was high than the standard percentage, there is no bar to the Tribunal awarding higher compensation on that basis. Observing, so the Division Bench of the Apex Court added 50% on the income of the deceased, though referred the constitution Bench judgment in **Pranai Sethi's case** referred supra. In the facts of the above judgment, there is evidence to increase future prospectus and 50% was added to the income.

In the present case, the deceased Srinivas Reddy was an agriculturist raising different crops in an extent of 3 ½ acres, which is not in dispute. No other evidence is produced that there is increase in future prospectus and when this Court concluded that the loss was only supervisory charges, the question of such increase of future prospectus at 50% cannot be accepted. Therefore, addition towards future prospectus is limited to 25%, but whereas the Tribunal fixed at 40% without any basis. Hence, the monthly income of the deceased Srinivas Reddy is fixed at Rs.5,000/- + 25% (Rs.1,250/-) future prospectus, which comes to Rs.6,250/-. Thus, the monthly income is estimated at Rs.6,250/-. The annual income comes to Rs.6,250/- x 12 = Rs.75,000/-. The Tribunal applied multiplier '15', as the age of the deceased was 40 years in terms of the guidelines issued by the Apex Court in **Sarla Varma v Delhi Transport Corporation**[6]. The Tribunal also deducted 1/4$^{th}$ towards personal expenses i.e. Rs.75,000/- x ¼ = 18,750/- and the total loss of contribution to the family comes to Rs.56,250/- (Rs.75,000/- - Rs.18,750/-) per annum. Thus, the total loss of income comes to Rs.56,250/- x 15 = Rs.8,43,750/-.

Though several grounds were raised in the appeal, during arguments, learned counsel for the appellant limited his argument to fixation of income of the deceased and application of addition towards future prospectus. Therefore, the appeal is confined to the above contentions

---

[6] AIR 2009 SC3104

only. The award of the Court below is modified accordingly and is confirmed in all other aspects.

In the result, the appeal is partly allowed reducing the loss of income to be contributed to the welfare of the family from Rs.22,68,000/- to Rs.8,43,750/- with proportionate costs and interest, without touching the other findings of the Court below. The total compensation is Rs.8,43,750/- + Rs.15,000/- + Rs.5,000/- + Rs.30,000/- + Rs.25,000/- = Rs.9,18,750/-.

Pending miscellaneous petitions, if any, shall stand closed.

**M.SATYANARAYANA MURTHY,J**

01.11.2018
kvrm