THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No.155 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 23.03.2007 passed by the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judges, Hyderabad, in O.P.No.2391 of 2004 whereby and whereunder the Tribunal partly allowed the claim of the appellants and awarded a sum of Rs.2,79,900/- towards compensation payable jointly and severally by the respondents along with costs and interest @ 7.5% per annum from the date of petition i.e.13.11.2006 till the date of realization, as against the claim of Rs.4,00,000/- on account of death of the deceased Gnana Prakash in the motor accident occurred on 30.05.2004.

Appellants-claimants, who are the father, mother and sister of the deceased Gnana Prakash respectively, filed claim petition under Section 166 of the Motor Vehicles Act alleging that on 30.05.2004 while the deceased Gnana Prakash and one Pocharam Ramulu were proceeding on Hero Honda bearing No.AP12D 6745 from Dharma Reddy Village towards Hyderabad and on the way when they reached Aurangabad Village outskirts near Leprosy Hospital, at about 3.00 p.m., one APSRTC bus bearing No.AP9Z-9370 which was coming in opposite direction at high speed driven by its driver in a rash and negligent manner dashed against the motor cycle, due to which Gnana Prakash fell down and received grievous head injury and Pocharam Ramulu died on the spot. The injured Gnana Prakash was shifted to Medak Government hospital. After providing first aid, he was shifted to NIMS hospital, Hyderabad. While taking treatment, he died on 06.06.2004. Police Medak registered a case in crime No.48/2004 for the offence punishable under Section 304-A of Indian Penal Code. The deceased was hale and healthy, aged 22 years and was working in Karvy Consultants, used to earn Rs.4,000/- per month and contribute the entire amount to his family members. Thus, the claimants claimed compensation of Rs.4,00,000/- from the respondents.

Respondents filed a common counter denying the averments of the claim petition and pleaded contributory negligence on the part of the deceased.

Based on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident caused death to the deceased that took place due to rash and negligent driving of the driver of the respondent No.1's vehicle?
2) Whether the petitioners are entitled for compensation? If so to what amount and from whom?
3) To what relief?

During the trial, PWs 1 to 3 were examined and Exs.A.1 to A.6 were got marked on behalf of the claimants. On behalf of the respondents, no oral evidence was adduced, however, Ex.B.1-copy of Insurance Policy was got marked. Based on the evidence of PWs 1 and 2 and Exs.A.1 to A.5, the Tribunal came to the conclusion that the offending vehicle i.e. bus bearing No.AP9Z-9370 was driven by its driver in a rash and negligent manner and dashed against the motor cycle due to which the deceased Gnana Prakash fell down and received grievous head injury, he was shifted to

Government Hospital, Medak. After first-aid he was shifted to NIMS hospital. While undergoing treatment, he died on 06.06.2004. Accordingly, the Tribunal answered issue No.1 in favour of the claimants. Further, the Tribunal based on the evidence of PW-3 and Ex.A.6 came to the conclusion that the deceased was getting salary of Rs.100/- per day by working as Office Boy. The Tribunal has taken the monthly income of the deceased as Rs.2,500/- per month by considering 25 working days in a month. The Tribunal deducted 1/3rd therefrom towards personal expenses and arrived an amount of Rs.1,666/- per month and Rs.19,992/- per annum towards actual contribution of the deceased to his family. Considering the age of the mother of the deceased as 45 years, the Tribunal adopted the multiplier of '13' and thereby awarded Rs.2,59,896/- towards loss of dependency. That apart, the Tribunal awarded Rs.20,000/- towards expectancy of life, loss of estate and other miscellaneous expenses. Thus, in total, the Tribunal awarded compensation of Rs.2,79,896/- rounded of to Rs.2,79,900/- along with interest @ 7.5% per annum from the date of petition till the date of realization along with costs. Aggrieved by the quantum of compensation, the present appeal is filed.

Learned counsel for the appellants-claimants would contend that the Tribunal ought to have taken the income of the deceased as Rs.3,000/- per month instead of Rs.2,500/- per month, as per the evidence of P.W.3. The Tribunal erred in applying the multiplier of '13' based on the age of the mother of the deceased. As per the ratio laid down in ***Sarla Verma & others vs. Delhi***

Transport Corporation & another[1], the appropriate multiplier should be '18'. He would further contend that as per the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***[2], the appellants are entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The appellants are also entitled for 40% of the income towards future prospects as the deceased was working in Karvy Consultants and used to receive fixed salary of Rs.3,000/- per month as per the evidence of P.W.3 and the deceased was a permanent employee. Accordingly, he seeks enhancement of the compensation awarded by the Tribunal.

In the facts and circumstances of the case and in considered view of this Court, the deceased was hale and healthy, aged about 22 years and used to receive salary of Rs.3,000/- per month as per the evidence of P.W.3 and Ex.A.6. Hence, the Tribunal grossly erred in calculating the earnings of the deceased as Rs.2,500/- per month. Hence, the annual income of the deceased could be Rs.36,000/- (Rs.3,000/- X 12) and if 1/2 is deducted therefrom towards personal expenses of the deceased, as the deceased was un-married, the annual contribution of the deceased to his family would be Rs.18,000/-. As per the ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma (1 supra)***, the appropriate multiplier would be '18' as the deceased was aged 22 years at the time of the accident. Thus, the loss of dependency would comes to Rs.3,24,000/-. Further, the Tribunal awarded only Rs.20,000/-

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

towards expectancy of life, loss of estate and other miscellaneous expenses. However, in view of the ratio laid down by the Hon'ble Supreme Court in ***Pranay Sethi (2 supra)***, the claimants are entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. That apart, the claimants are also entitled for Rs.20,000/- towards loss of love and affection. Further, as the deceased was aged 22 years and getting fixed income, in view of the judgment of the Hon'ble Supreme Court in ***Pranay Sethi (2 supra)***, the claimants are entitled for 50% of income towards future prospects, which comes to Rs.1,62,000/-. Thus, in total the appellants-claimants are entitled for the compensation of Rs.5,36,000/- along with interest @ 7.5% per annum from the date of petition till the date of realization.

Though the compensation claimed by the claimants before the Tribunal was only Rs.4,00,000/-, 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.5,36,000/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.1,36,000/-.

Accordingly, the appeal is allowed enhancing the compensation amount granted by the Tribunal from Rs.2,79,900/- to Rs.5,36,000/-, out of which, the first appellant-father of the deceased is entitled for Rs1,36,000/- along with proportionate interest and costs, second appellant-mother of the deceased is

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[3] (2003) 2 SCC 274

entitled for Rs.2,00,000/- along with proportionate interest and the third appellant-sister of the deceased is entitled for Rs.2,00,000/- along with proportionate interest, payable by the respondents jointly and severally. The respondents are directed to deposit the entire compensation amount, after deducting the amounts already deposited, with interest at 7.5% per annum from the date of petition till the date of realization within a period of one month from the date of receipt of a copy of this order. Appellants can withdraw their respective share amounts whenever such deposit is made, subject to payment of difference of Court Fee.

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

M.GANGA RAO, J

Dated 14th August, 2018

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