HON'BLE SRI JUSTICE P. KESHAVA RAO

M.A.C.M.A.No.1437 of 2015

ORDER:

Heard the learned counsel for the appellants and the learned Standing counsel appearing for the 2nd respondent Insurance Company.

The present appeal is filed for enhancement of the quantum of compensation in O.P.No.2083 of 2009 on the file of the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad.

The facts in brief are that on 03.06.2009, at about 7.45 a.m., the deceased was proceeding on his motor cycle bearing No.AP 29L 4175 along with his friend Mallesh from Mall and when they reached near Balagaram Eye Hospital, Takkalapally Village, Yacharam Mandal, the offending vehicle bearing No.AP 29TA 4998 came from opposite direction and hit the motor cycle. As a result, the deceased sustained bleeding injuries all over the body and was shifted to the hospital where he succumbed to injuries on 04.06.2009. The deceased was working as Field Assistant in Agriculture Drip Irrigation and earning Rs.7,500/- per month and he was only the earning member of his family. Therefore, a sum of Rs.7 lakhs towards compensation was claimed.

The 2nd respondent filed a counter affidavit disputing the manner of accident and negligence on the part of the offending vehicle. However, the 2nd respondent company admitted the existence of the valid policy on the date of accident. The 2nd respondent disputed the driver of the offending vehicle possessing valid and effective driving licence and there is a contravention of the terms and conditions of the policy. The appellants to prove their case, examined PWs.1 to 3 and marked Exs.A1 to A4. On behalf of the 2nd respondent, RWs.1 and 2 are examined and Ex.B1, true copy of the policy, was marked.

The learned Tribunal, after considering the facts and appreciating the evidence, allowed the petition in part by orders dated 29.12.2014, awarding Rs.3,93,000/- towards compensation with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of deposit and etc.

Learned counsel appearing for the appellants basically contended that the notional income taken by the Tribunal at Rs.3,500/- per month, cannot be sustained, since the deceased was working as a Field Assistant in Agriculture Drip Irrigation and was earning Rs.7,500/- per month. That apart, he also strenuously contended that the deceased was pursuing B.Ed., course. Ex.A4 is the bona fide certificate of the deceased issued by the MJR College of Education, Marriguda, Nalgonda District. To support the said contention, he examined PW.3, who was the Principal of the College. Therefore, the appellants are entitled for the future prospectus as decided by the Apex Court in **Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another**[1]. He further contended that under the conventional heads/non-pecuniary damages, the Tribunal erred in awarding only Rs.15,000/- instead of Rs.70,000/-.

Per contra, the learned Standing counsel appearing for the 2nd respondent company contended that there is no material on record to show that the deceased was working as Field Assistant in Agriculture Drip Irrigation and was drawing a sum of Rs.7,500/- per month. He also contended that the appellants failed to plead and prove that the deceased was pursuing B.Ed., course. He further contended that the amount of

[1] (2009) 6 SCC 121

compensation as awarded by the Tribunal is just and reasonable in the facts and circumstances of the case.

Having heard both the counsel and from the perusal of the material on record, the point that arises for consideration is:

> Whether the petitioners are entitled for enhancement of compensation on the income of the deceased as well as under the conventional heads i.e., loss of consortium, funeral expenses and loss of estate?

Though the appellants pleaded that the deceased was working as Field Assistant drawing salary of Rs.7,500/- per month, there is no forthcoming evidence in that regard. However, a perusal of Ex.A4, bona fide certificate of the deceased issued by the MJR College of Education, and the evidence of PW.3 would indicate that the deceased was pursuing B.Ed., course. In fact, PW.3 in his evidence deposed that he is the Principal of MJR College of Education, Marriguda, Nalgonda District. In response to the summons received from the Court below, he attended the Court for giving evidence. He deposed that the deceased was admitted in B.Ed., course on 10.10.2008 for the academic year 2008-09 with admission No.170. The admission was in Social Studies and Mythology and the deceased was holding bachelor degree in B.Com. As per the college record, the date of birth of the deceased is 10.05.1985. He also deposed that he brought the original admission register and after verifying the same, he found the name of the deceased at Sl.No.170 at page No.17 of the register. In the cross-examination, it is revealed that he has shown his identity card, wherein his designation is shown as Principal of the said college. The deceased was given admission in the management quota and entries in the admission register were made after approval of the State Council for Higher Education and thereafter it was intimated to the University. However, the suggestion given to him that the deceased is not a student of his college was denied. From this, it is established that the deceased was prosecuting his B.Ed., course at the time of accident. When the appellants failed to establish the income of the deceased and since he was prosecuting the B.Ed., course, the income of the petitioner at Rs.3,500/- per month appears to be unreasonable.

Learned counsel appearing for the appellants relying on **National Insurance Co., Ltd. vs. Rajadurai S. and others**[2] and **Nagar Mal and others vs. Oriental Insurance Co., Ltd., and others**[3] contended that the income of the deceased would have been assessed at Rs.8,000/- per month and the future prospects would be 40%. However, the learned Standing counsel opposed the said request.

In the above said two decisions, the Apex Court while dealing with the similar issue assessed the income of the deceased, who was pursuing C.A., at Rs.6,000/- per month.

In the case on hand, though B.Ed., course may not be treated as a professional course, this Court is of the opinion that Rs.6,000/- per month would be reasonable income of the deceased and at the same time since the age of the deceased was 24 years, the appellants are entitled for future prospects at 40% of the income of the deceased. Therefore, this Court is of the opinion that the appellants are entitled for enhancement of compensation as indicated above.

Accepting the income of the deceased as Rs.6,000/-, the annual income of the deceased would be Rs.72,000/- (Rs.6,000 X 12). If 50% is deducted therefrom towards personal expenses and the multiplier of '18' is applied, the loss of dependency would be Rs.6,48,000/- [(Rs.72,000 X 50%) X 18]. In addition, the claimants are entitled for 40% towards loss of future prospects as per the judgment of the Hon'ble Supreme Court in followed in **Nagar Mal (supra)**, as mentioned supra, which comes to

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[2] 2018 ACJ 1693
[3] 2018 ACJ 971

Rs.2,59,200/-. Thus, the total earnings of the deceased would be Rs.9,07,200/- (Rs.6,48,000 + Rs.2,59,200/-). That apart, the claimants are entitled for Rs.30,000/- under conventional heads. Therefore, the compensation awarded by the Tribunal is enhanced to Rs.9,37,200/-.

The further question that arises for consideration is:

> Whether the appellants are entitled to the compensation as arrived at supra, which exceeds the claim made by them?

The compensation as arrived at by this Court would exceed by Rs.2,37,200/-. The Apex Court in **Nagappa vs. Gurudayal Singh and others[4], Sri Laxman @ Laxman Mourya v. divisional Manager, Oriental Insurance Company Limited[5]** and **Rajesh and others v. Rajbir Singh and others[6]** considered the above said aspect and held that there is no prohibition to grant just and reasonable compensation arrived at which is more than the amount claimed.

Though the compensation claimed by the claimants before the Tribunal was only Rs.7,00,000/-, in view of the decisions of the Hon'ble Supreme Court in **Nagappa, Sri Laxman and Rajesh (supra)**, 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.9,37,200/-. However, the claimants shall pay the difference of Court Fee for the excess amount of Rs.2,37,200/-.

Accordingly, the appeal is allowed in part to the extent indicated above and the rest of the order remains undisturbed.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 15.12.2018.
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[4] (2003) 2 SCC 274
[5] 2012 ACJ 191 (SC)
[6] 2013 (4) ALT 35