THE HON'BLE SRI JUSTICE P. KESHAVA RAO

M.A.C.M.A. No.977 OF 2015

JUDGMENT:

Heard the learned Standing Counsel for the appellants and the learned counsel appearing for the respondents 1 to 4.

2. The present appeal came to be filed questioning the quantum awarded in MVOP No.1299 of 2012 on the file of Court of XI Additional Chief Judge, City Civil Court, Hyderabad, dated 27.10.2014.

3. The facts in brief are that on 17-03-2012 at about 3.30 p.m., when the deceased was crossing the road at Hyderabad Central University, RTC bus bearing No.AP 28 Z 3574 driven at a high speed in a rash and negligent manner dashed the deceased leading to the death of the deceased. The specific case of the respondents herein is that the offending vehicle was driven in a rash and negligent manner by the driver of the vehicle causing the accident. At the time of the death, the deceased was working as Hamali and he was earning an amount of Rs.15,000/- per month. Total earnings of the deceased were being contributed to the family maintenance. Because of the sudden demise of the deceased, it caused mental shock and agony to the entire family apart from love and affection and financial distress to the family members. Therefore, the respondents filed the above OP claiming a sum of Rs.10,00,000/- under all heads.

4. The appellants herein filed a counter denying the material allegations made in the petition, disputing the manner of accident,

age, avocation and earning capacity of the deceased and also the negligence of the driver of the offending vehicle. The Tribunal below after considering the material on record, in all, awarded a sum of Rs.12,97,000/- with simple interest at 7.5% per annum from the date of filing of the original petition till the deposit or realization and costs thereon by orders dated 27.10.2014. Since the respondents herein claimed only Rs.10,00,000/-, they were directed to pay the deficit court fee on the excess compensation amount awarded at Rs.2,97,000/-. Questioning the said orders, the present appeal is filed.

5. The learned Standing Counsel appearing for the appellants, mainly submitted that the Tribunal below committed an error in awarding a sum of Rs.3,25,000/- instead of Rs.70,000/- under the conventional heads. Since the deceased was a self employed person, on a fixed wages per day, the future prospects would have been at 40% instead of 50% as awarded by the Tribunal. To support his contention, learned Standing Counsel relied on the judgment of the Apex Court in **National Insurance Company v. Pranav Sethi**[1] The Apex Court while dealing with the amounts under the conventional heads as well as the future prospects, held as under:

> "54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh*. It has granted Rs.25,000/- towards funeral expenses, Rs.100,000/- loss of consortium and Rs.1,00,000/- towards loss of care and guidance and Rs.1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though ***Rajesh*** refers to ***Santosh Devi,*** it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb Rule in this aspect. Otherwise, there will be extreme difficulty

[1] **AIR 2017 SC 5157**

in determination of the same and unless the thumb Rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided.

61. In view of the aforesaid analysis, we proceed to record our conclusions:

(i)…………….
(ii)……………
(iii)…………...
(iv)……………
(v)…………….
(vi) In case the deceased was self-employed or on a fixed salary, an addition of 40% in the established income should be the warrant where the deceased was below the age of 40 years, should be made. The additional should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the additional should be `15%. Actual salary should be read as actual salary less tax."

6. Per contra, the learned counsel appearing for the respondents, supported the impugned order. He strenuously contended that the monthly emoluments of the deceased would have been taken at Rs.9,500/- instead of Rs.4,500/-. However, the respondents have not filed any separate appeal or filed any cross-appeal, claiming enhancement on the ground that the monthly emoluments of the deceased would have been taken as Rs.9,500/- instead of Rs.4,500/-. In the absence of any appeal, the said contention cannot be accepted.

7. Having heard both the counsel and from the perusal of the material on record, the admitted facts are that on 17.03.2012, at about 3.30 p.m,, the deceased while crossing road at Hyderabd Central University met with an accident because of the rash and negligent driving of the offending vehicle bearing No.AP 28 Z 3574. At the time of the accident, the deceased was working as Hamali drawing emoluments @ Rs.15,000/- per month. However, the learned Tribunal relying on the judgment of the Apex Court in 2011 (2) AWR page 998 taken the income of the deceased at Rs.4,500/- per month.

Further, relying on the principle laid down in 20013 ACJ 1403, if the prospects of the deceased was taken as 50% on the actual income of the deceased. The learned Standing appearing for the appellants contended that in view of the law laid down by the Apex Court in **Pranay Sethi's** case, the total amount to be awarded under the conventional heads is only Rs.70,000/- and the future prospects of the deceased would be only 40% and to that extent the order of the Tribunal below has to be modified.

8. Admittedly, the Tribunal while dealing with compensation, awarded Rs.3,25,000/- under the conventional heads. But since in Pranay Sethi's case, as referred supra, the Apex Court held that the reasonable figures on the conventional heads i.e., loss of estate, loss of consortium and funeral expenses will be at Rs.15,000/-, 40,000/- and 15,000/- respectively, the same has to be followed. As such, the order of the Tribunal in awarding a sum of Rs.3,25,000/- under the conventional heads has to be modified and accordingly the amount is reduced to Rs.70,000/-. Similarly, the future prospects of the deceased since he being a self employed person on a fixed wages, has to be reduced to 40% since the deceased was aged about 35 years.

9. As far as the income of the deceased person is concerned, since he being a self-employed person, the income is taken at Rs.4,500/- per month. As the age of the deceased was 35 years at the time of the accident, the future prospects have to be taken at 40% instead of 50%. Therefore, the annual income of the deceased comes to Rs.75,600/- (Rs.54,000/- (annual income) + Rs.21,600/- (40% on

Rs.54,000/-). After deducting 1/4th towards his personal expenses, the deceased would have contributed Rs.56,700/- (Rs.75,600 x ¼) towards his family and for their maintenance. Therefore, the respondents are awarded Rs.9,07,200/- (Rs.56,700/- x 16 multiplier) towards loss of dependency.

9. In these circumstances, the appeal is partly allowed in reducing the quantum of compensation under the conventional heads to Rs.70,000/- from Rs.3,25,000/- and the compensation towards loss of dependency to Rs.9,07,200/- from Rs.9,72,000/-. Thus, in all the respondents are entitled to Rs.9,77,200/- (Rs.9,07,200/- towards loss of dependency + Rs.70,000/- towards conventional heads). It is needless to observe that the order of the Tribunal below as far as rate of interest and apportionment of compensation amongst the respondents remains undisturbed.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed.

P. KESHAVA RAO, J

December 15, 2018
KTL/ES