

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

MA.CMA. No.2234 of 2005

JUDGMENT:

This appeal is filed by petitioners in O.P.No.905 of 1999 on the file of Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad, for enhancement of compensation on the ground that Tribunal deducted Rs.60,000/- towards contributory negligence on the part of deceased and granted them compensation to a tune of Rs.3,30,000/- only whereas they claimed a sum of Rs.8,00,000/- towards compensation.

It is the case of appellants that appellant No.1 and appellant Nos.2 to 4 are wife and children of Doddaji @ Meesala Jeevan Rao; that on 04.07.1999, the said Jeevan Rao was going on his Scooter bearing No.AP25/8933 from Padgal to Pochampad and at about 2.45 p.m., when he reached the limits of Bussapur Village, a jeep bearing No.AP1/T 394 being driven by its driver in rash and negligent manner came in high speed on wrong side and hit the said Jeevan Rao as a result of which he fell down and the front wheel of jeep ran over his head and thereby, he died on the

spot and his Scooter was damaged and in this regard, Crime No.71 of 1999 was registered by Police, Balkonda, for the offence punishable under Section 304-A IPC; the deceased was earning Rs.15,000/- per month by doing agriculture and selling milk, vegetables etc.; that due to his death, appellants had lost all their future hopes and source of income; that the accident occurred due to rash and negligent driving of driver of offending jeep and thereby, they claimed compensation of Rs.8,00,000/- against respondent Nos.1 and 2 by way of filing O.P.

The Tribunal on appreciation of oral and documentary evidence, awarded compensation of Rs.3,90,000/- to appellants but deducted Rs.60,000/- from out of the said compensation towards contributory negligence on the part of the deceased, as such, they are entitled to net compensation of Rs.3,30,000/-. Against the said order, this appeal is filed.

Learned counsel for appellants submits that though no issue is framed in respect of contributory negligence, Tribunal deducted an amount of Rs.60,000/- therefor from out of the compensation arrived at Rs.3,90,000/- and that though appellants are four in number, Tribunal erroneously deducted 1/3rd amount from the income of deceased towards his personal expenditure,

but, as per the judgment of Apex Court in **Sarla Verma & Others v. Delhi Transport Corporation and another**¹, contribution to personal expenses should be 1/4th from income of deceased, when claimants are four in number. He further submits that an amount of Rs.70,000/- should be granted towards consortium, loss of estate, funeral expenditure and transport charges but only an amount of Rs.30,000/- was granted therefor. He further submits that though it was stated by appellants that deceased was earning Rs.15,000/- per month by working as Grama Sevak, doing agriculture work and selling milk, vegetables etc., Tribunal erroneously took Rs.3,000/- as monthly income of deceased. He also submits that in **Shivaraj v. Rajendra and another**², Apex Court sustained the Tribunal's quantification of compensation amount on the notional income of appellant therein at Rs.150/- per day and therefore, compensation may be enhanced to appellants.

On the other hand, learned Standing Counsel for National Insurance Company appearing for respondent No.2 submits that appellants let in no evidence to show that neither deceased was earning income from doing agriculture, business etc., nor vehicle

¹ (2009) 6 Supreme Court Cases 121

² (2018) 10 Supreme Court Cases 432

was damaged nor it was in the name of deceased, as such, Tribunal rightly granted compensation of Rs.3,30,000/- to appellants and no interference is called for in that regard.

It is to be seen that in order under appeal, though appellants stated that deceased was earning Rs.15,000/- per month, Tribunal took monthly income of deceased at Rs.3,000/- per month. The Apex Court in **Shivaraj** (2 supra) sustained the Tribunal's taking the notional income of appellant therein, who was a coolie, at Rs.150/- per day. In view of same, in the case on hand, appellants filed documentary evidence, Exs.A.6 and A.8 to A.10, to prove the income of deceased, as such, Rs.4,500/- may be taken as monthly income of deceased. In this connection, it is to be noted that Tribunal has not added 40% of the income of deceased towards future prospects. Therefore, as per the judgment of a Constitution Bench of Apex Court in **National Insurance Company Limited v. Pranay Sethi**³, 40% of income of deceased is to be added towards future prospects. Thus, income of deceased would be Rs.6,300/- per month {Rs.4,500/- + Rs.1,800/- (Rs.4,500 x 40/100)} i.e., Rs.75,600/- per annum. It is to be noted further that appellants are four in number, as such, 1/4th should be deducted towards personal expenses of deceased from his

³ (2017) 16 SCC 680

income. Then, loss of contribution to family comes to Rs.56,700/- per annum. The appropriate multiplier for the age of the deceased is '15', as rightly applied by Tribunal following the judgment of Apex Court in **Sarla Verma** (1 supra). Thus, total loss of contribution to family comes to Rs.8,50,500/- (Rs.56,700/- x 15). Further, as per **Pranay Sethi** (3 supra), Rs.40,000/- is awarded towards consortium to appellant No.1, who is wife of deceased and Rs.30,000/- towards loss of estate, transportation charges and funeral expenses. Thus, appellants are entitled to total compensation of Rs.9,20,500/-.

The enhanced compensation is apportioned among appellants in proportion to the amounts granted to them by Tribunal.

In the result, this appeal is allowed enhancing the compensation from Rs.3,30,000/- to Rs.9,20,500/-. Though claim is for Rs.8,00,000/-, there is no bar for granting just compensation in excess of claim (see **Nagappa v. Gurudayal Singh & Others**⁴). However, on the enhanced compensation of Rs.5,90,500/-, appellants are entitled to interest @ 7.5% per annum from the date of petition till realization. Tribunal is

⁴ (2003) 2 SCC 274

directed to deduct differential Court fee from enhanced compensation.

Consequently, Miscellaneous Petitions, if any pending, shall stand disposed of. No order as to costs.

A. RAJASHEKER REDDY, J

13th FEBRUARY, 2019.

kvni

