THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.1594 OF 2010

JUDGMENT

This appeal is filed by the claimants against the order and decree dated 10-03-2010 passed by the Motor Accidents Claims Tribunal –cum – III Additional Chief Judge, City Civil Court, Hyderabad, seeking enhancement of the compensation.

The claimants, who are five in number, are the wife, children and parents of the deceased – Vippuluri Srinivas Rao. Their case is that on 14-11-2007 at about 9-00 pm., near Pasupuleru bridge on Balanagar to Medak road, while the deceased and another were proceeding on a motor cycle, at accident spot, the driver of the crime tractor bearing No. AP 23 T 3207 and Trailer bearing No. AP 23T 3208, drove the tractor-trailer in a rash and negligent manner, and dashed the motor cycle and as a result, deceased sustained grievous injuries and died.

Their claim is that the deceased was aged 32 yeas as on the date of the accident and was an agriculturist, earning an amount of Rs.15,000/- per month and was contributing the income to the claimants, who are his dependants, and due to untimely death of the deceased, they are put to lot of suffering and hardship. Thus, the claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- and that the 1st respondent who is the owner and the 2nd respondent - insurer of the crime vehicle, are jointly and severally liable to pay the compensation.

The owner remained ex party and the insurance company filed counter affidavit denying the manner of accident pleaded by the claimants, age, occupation and income of the deceased and contending that the compensation claimed is excessive, sought for dismissal of the claim petition.

The Tribunal based on the evidence, categorically recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the crime vehicle.

Thought the claim of the appellants is that the deceased was an agriculturist and was earning an amount of Rs.15,000/- per month, as no evidence was produced, Tribunal taking the income of the deceased at Rs.4,500/- per month and relying on the judgment of the Apex Court in *SARLA VERMA vs. DELHI TRANSPORT CORPORATION*[1], as the deceased was aged 32 years, applied the multiplier of 16 and further deducting 1/3rd towards personal expenses, arrived at a total compensation of Rs.5,76,000/-, but as the claim is for Rs.5,00,000/-, restricted the compensation to claimed amount and further granted interest at the rate of 6 per cent per annum from the date of the petition till realization and also ordered for apportionment of the compensation among the claimants and mode of deposit of amount and its withdrawal. The insured and insurer were made jointly and severally liable to pay the compensation.

As noted above, not being satisfied with the compensation granted by the Tribunal, the claimants filed the present appeal, seeking enhancement.

Learned counsel for the appellants submit that the Tribunal arrived the loss of dependency at Rs.5,76,000/-, but restricted the compensation

[1] (2009)6 SCC 121

to Rs.5,00,000/-, which is the claimed amount. He submits that it is well settled that if the court arrives at a just compensation to be awarded to the claimants, which exceeds the claimed amount, the same can be awarded.

He further submits that the total number of dependants on the deceased are five in number and hence as per the judgment of the Apex Court in Sarla Verma case (1 supra), the deduction to be made towards personal and living expenses from out of the calculated income of the deceased, shall be at the rate of 1/4th, but the Tribunal deducted 1/3rd and the same may be modified. He further submits as per the judgment of the Apex Court, in *NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI*[2], the claimants are entitled to 40 per cent of the income of the deceased towards future prospects. But the Tribunal has not awarded future prospects. Relying on the said judgment of the Apex Court, he submits that the 1st claimant, who is the wife of the deceased is entitled to Rs.40,000/- towards loss of consortium and the claimants are entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral charges. Thus, in all they are entitled to Rs.70,000/- under the said conventional heads. But the Tribunal has not granted any amount under the said heads. He further submits that this court and the Apex Court, have been granting interest at the rate of 7.5 per cent, but the Tribunal granted interest at the 6 per cent per annum, which is on the lower side. With these contentions, learned counsel for the appellant sought to enhance the compensation granted by the Tribunal.

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[2] AIR 2017 SC 5157

Sri N. Mohan Krishna, learned Standing Counsel appearing for the 2nd respondent – insurance company supporting the impugned order, sought to dismiss the appeal.

In the present case, there is no dispute that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and the insurance policy was in force as on the date of the accident and the dispute in the present appeal is only with regard to quantum.

Though the claimants claimed that the deceased was an agriculturist and earning an amount of Rs.15,000/- per month, have not produced any evidence in proof of their claim. The Apex Court in the decision reported in *RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED*[3] has taken the monthly income of a daily wager at Rs.4,500/-. As there is no tangible evidence on record with regard to income of the deceased, the Tribunal, in my considered view, is justified in taking the monthly income of the deceased at Rs.4,500/- and no exception can be taken.

With regard to future prospects, the Apex Court in the case of Pranay Sethi (supra), held as under:

> "60. (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

The deceased was aged 32 years as on the date of the accident. As per the above judgment of Apex Court, an addition of 40% of the

[3] AIR 2011 SC 2951

established income shall be made towards future prospect. 40% of Rs.4,500/- would come to Rs.1,800/-. Thus the total monthly amount, including future prospects, would come to Rs.6,300/-.

The Apex Court in Sarla Verma case (1 supra) held that where the number of dependent family members of the deceased are 4 to 6, the deduction towards personal and living expenses, shall be 1/4th. In the present case, the claimants, who are the dependants of the deceased are five in number. Therefore, the deductions towards personal expenses from out of the income of the deceased, shall be 1/4th, but the Tribunal deducted 1/3rd, which requires to be modified. Accordingly, if 1/4th is deducted from Rs.6,300/-, which is the monthly income arrived at by this court, the amount that the deceased would be contributing to his family will come to Rs.4,725/- (Rs.6,300/- - Rs.1,575/-) per month and Rs.56,700/- per annum.

For the age group of deceased, who is 32, the appropriate multiplier as per column No.4 of the table given in the judgment of the Apex Court in Sarla Verma (supra), is '16' and the Tribunal also rightly used the said multiplier.

Thus, the claimants are granted an amount of Rs.9,07,200/- (Rs.56,700/- x 16) towards loss of dependency.

In Pranay Sethi's case (supra), the Apex Court , granted an amount of Rs.70,000/- towards conventional heads. The relevant portion of the judgment of the Apex Court is thus:

> "60 (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs.15,000/- respectively.

> The aforesaid amounts should be enhanced at the rate of 10% in every three years."

In view of the above judgment of the Apex Court, the 1st claimant, who is wife of the deceased, is granted an amount of Rs.40,000/- towards loss of consortium and the claimants are granted an amount of Rs.15,000/- each towards 'loss of estate' and 'funeral expenses'. Thus, in all, they are granted an amount of Rs.70,000/- under the conventional heads.

The claimants are granted a total compensation of Rs.9,77,200/- (Rs.9,07,200/- + Rs.70,000) (Rupees nine lakhs seventy seven thousand, two hundred only) with interest at the rate of 7.5 per cent per annum from the date of the petition till date of realisation.

The apportionment of the compensation among claimants shall be in proportion as per the orders of the Tribunal in this regard.

In the present case, the amount granted to the claimants exceeded their claim. The Apex Court in *NAGAPPA vs. GURU DAYAL SINGH*[4] held that the Tribunal is under a duty to grant just and fair compensation which could, in a given case be even more than what is actually claimed in an application filed under Section 166 of the Act. This principle of law has been reiterated in several subsequent judgments of the Apex Court in *SRI LAXMAN @ LAXMAN vs. DIVISIONAL MANAGER, ORITL INS. CO. LTD*[5] and *RAJESH v. RAJBIR SINGH*[6]. In view of the judgments of the Apex Court, this court is inclined to grant the just compensation arrived at, though the same exceeds the claim of the appellants.

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[4] (2003)2 SCC 274
[5] (2011)0 Supreme (SC) 1054
[6] (2013)9 SCC 54

The Tribunal is directed to deduct the differential court fee on the amount in excess of Rs.5,00,000/- from out of the enhanced amount deposited by respondents.

For the foregoing reasons, the appeal is accordingly allowed to the extent indicated above.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:20—02—2019

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