THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.3308 OF 2005

JUDGMENT

The present appeal is filed by the claimants against the order and decree dated 24.07.2004, passed by the Motor Accidents Claims Tribunal (1st Additional District Judge) at Nizamabad in O.P.No.522 of 1999, seeking enhancement of compensation, whereby, the Tribunal awarded an amount of Rs.3,10,500/- as against the claim of Rs.5,00,000/-.

2. The 1st appellant is the wife of the deceased, appellants 2 and 3 are the minor children of the deceased, appellant No.4 is the mother of the deceased and appellant No.5 is the younger brother of the deceased.

3. In the claim petition, it is stated that on 24-02-1999 at about 10-30 p.m., when the deceased Gopu Gangaiah @ Gangaiah, along with three others, were traveling in a jeep bearing No. AP 25D 2856, from Doodgaon to Hyderabad, to receive one Gopu Borranna, who was coming from abroad, and that when the said jeep reached Bussapur cross roads, the offending lorry bearing No. GJ - &X-1232, being driven by its driver, in a rash and negligent manner, dashed against the said jeep, as a result of which, the inmates of the jeep, including the deceased, sustained injuries and that immediately after the accident, the deceased was shifted to Government Hospital, Nizamabad and subsequently, he was referred to Gandhi Hospital, Secunderabad and that on 28-02-1999, while the deceased was undergoing treatment at Gandhi Hospital, Secunderabad, he succumbed to injuries.

4. Police at Sadasivnagar, registered case in Cr.No.18 of 1999 under Sections 304-A and 338 IPC against the driver of the offending lorry.

5. The case of the claimants is that the deceased was vegetable vendor and was earning an amount of Rs.15,000/- per month, and on account of the death of the deceased, the claimants, who are dependent on his income, lost their bread winner. With these averments, the claimants

filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/-.

6. The owner of the offending lorry, remained *ex parte* and the insurer filed counter affidavit, denying the manner of accident alleged by the claimants, age, income and avocation of the deceased and contending that the compensation claimed is excessive, sought for dismissal of claim petition.

7. Based on above pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident was due to rash and negligent driving of the driver of the lorry bearing No. GJ -&X – 1232?
2. Whether the petitioners are entitled for compensation. If so, to what extant and from whom?
3. To what relief?

8. In support of the case of the claimants, P.Ws.1 to 3 were examined and Exs.A-1 to A-13 were marked and on behalf of the respondents, no oral evidence was adduced and a copy of the policy was marked as Ex.B-1.

9. Appreciating the entire evidence, both oral and documentary, the Tribunal recorded finding of fact that the accident occurred due to rash and negligent driving by the driver of the offending lorry.

10. The Tribunal taking the income of the deceased as Rs.2,000/- per month and deducting 1/3rd towards personal expenses of the deceased, arrived the income of the deceased at Rs.16,000/- per annum and taking the age of the deceased as 30 years, as per claim petition and post mortem examination report Ex.A-3, applying the multiplier of '18', awarded an amount of Rs.2,88,000/- towards loss of dependency. The Tribunal further awarded an amount of Rs.5,000/- towards loss of estate, Rs.10,000/- towards loss of consortium to the 1st claimant, who is the wife of the deceased, Rs.5,000/- towards transportation charges and Rs.2,500/- towards funeral charges, and thus in all awarded an amount of Rs.3,10,500/-, with interest at the rate of 9 per cent per annum from the date of petition, till

date of realization, and passed orders with regard to their apportionment and mode deposit and withdrawal.

11. The Tribunal further held that the insurance policy of the offending lorry was in force as on the date of the accident and hence, the 2nd respondent – insurance company has to indemnify the 1st respondent in paying compensation to the claimants, and thus both the respondents are jointly and severally liable to pay the compensation.

12. Seeking enhancement of compensation, the claimants filed the present appeal.

13. Since, the appeal is filed seeking enhancement of compensation, the other aspects with regard to findings of the Tribunal with regard to cause of accident and the liability, need not be gone into, and the appeal is confined to adequacy or otherwise of quantum.

14. Learned counsel for the appellants/claimants submit that the deceased is having agricultural lands and the claimants filed pahanies under Ex.A-9 to A-12 to show that he was doing agriculture, and that he was also doing vegetable business and earning an amount of Rs.15,000/- per month. The wife of the deceased who was examined as P.W.1, and the Sarpanch of the village, who was examined as P.W.3, testified this fact and the Insurance Company did not rebut this evidence by adducing any evidence, but the Tribunal disbelieving the entire evidence, and making some guess work, has taken the monthly income of the deceased at Rs.2,000/- per month, which is very meagre. Relying on the judgment reported in *SYED SADIQ v. UNITED INDIA INSURANCE CO. LTD*[1], he contended that in the said decision, facts and circumstances disclose that the claimant therein sustained 85% functional disability and he claimed that he is a vegetable vendor, and the Apex Court held that claimant cannot be expected to produce documents to prove his monthly income and considering the state of economy and rising

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[1] (2014)2 SCC 735

prices in agricultural produces, held that vegetable vendor reasonably capable of earning Rs.6,500/- and accordingly awarded compensation. Learned counsel also relied on an other judgment in *LAXMIDHAR NAYAK v. KISHORE BEHERA*[2], wherein the Apex Court, considering the death of a woman, who was an agricultural labourer, and also contributing to his house hold work, fixed the daily income of the deceased at Rs.150/- and Rs.4,500/- per month and accordingly awarded compensation. In view of these judgments, learned counsel sought to enhance the monthly income fixed by the Tribunal.

15. Learned counsel for the appellants further submits that the number of dependants on the deceased are five in number, and, therefore, as per judgment of the Apex Court in *SARLA VERMA v. DTC*[3], the deduction shall be at the rate of 1/4th, but the Tribunal deducted 1/3rd towards personal expenses of the deceased, and hence the same requires to be modified.

16. Learned counsel contended that as per the judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI*[4], while determining the income of the deceased, future prospects have also to be added to the actual income of the deceased. He submits that in this case, the age of the deceased is 30 years, and is involved in agriculture and vegetable vending, and hence he can be taken as self-employed, and as per the above judgment of the Apex Court (4 supra), 40% of the income has to be added to his established income, towards future prospects and thus the income of the deceased has to be determined. He submits that the Tribunal has not awarded any amount towards future prospects.

17. Learned counsel contended that as per the judgment of the Apex Court in *Pranay Sethi's* case (4 supra), the claimants are entitled to amount under conventional heads viz., loss of estate, loss of consortium and funeral

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[2] (2018)1 SCC 746
[3] (2009)6 SCC 121
[4] AIR 2017 SC 5157

expenses at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively, but the Tribunal has granted meagare amounts of Rs.5,000/- towards loss of consortium, Rs.5,000/- towards transport charges and Rs.2,500/- towards funeral charges, which are meagre and the amounts under these heads may be enhanced as per the judgment of the Apex Court.

18. He further submits that in the judgment of the Apex Court in *Pranay Sethi's* case (4 supra), the Apex court has categorically held that the above amounts granted under the conventional heads should be enhanced at the rate of 10% in every three years. He stated that as the Apex Court has not made it clear from which date the said enhancement shall be reckoned, the year of the accident, shall be taken and accordingly, the 10% enhancement ordered by the Apex Court, should be made applicable. Learned counsel further contended that since the Motor Vehicles Act, 1988 is a beneficial piece of legislation, when there is ambiguity, the interpretation, which is beneficial to the claimants, should be taken into consideration, as held by the Apex Court in *UNITED INDIA INSURANCE CO. LTD. v. PUSHPALAYA PRINTERS*[5]

19. Learned counsel further submits that in the accident, the 4th claimant, who is the mother of the deceased, lost her son and claimants 2 and 3, who are the minor children of the deceased, lost their father, therefore, as per the judgment of the Apex Court in *MAGMA GENERAL INS. Co. Ltd. v. NANU RAM*[6], the 4th claimant – mother of the deceased, is entitled to Rs.40,000/- under the head of 'filial consortium' and claimants 2 and 3 – children of the deceased, are entitled to Rs.50,000/- each, i.e., 1,00,000/- towards 'loss of love and affection / parental consortium'.

20. With the above contentions, learned counsel for the appellants sought to enhance the compensation awarded by the Tribunal.

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[5] (2004)3 SCC 694
[6] 2018 ACJ 2782

21. On the other hand, Sri A.Rama Krishna Reddy, learned Standing Counsel appearing for the 2nd respondent – Insurance Company submits that there is no tangible evidence on record to prove the claim of the appellants that the deceased was earning an amount of Rs.15,000/- per month and, therefore, the Tribunal has taken the income of the deceased at Rs.2,000/- per month. He submitted that the Tribunal considering the age of the deceased, applying the right multiplier, awarded just compensation towards loss of dependency and also awarded other amounts reasonably and, therefore, the same may not be interfered with. With reference to the argument of the learned counsel of the appellants that as per the judgment of the Apex Court in *Pranay Sethi's* case (4 supra), the enhancement under the conventional heads, shall be at the rate of 10% in every three years, and that it shall be reckoned by taking into the date of the accident into consideration, the learned Standing Counsel submits that such argument cannot be accepted and the judgment of the Apex Court was delivered on 31-10-2017 answering a reference and hence, the 10% increase on conventional heads, should be reckoned from the year 2020 and the date of the accident cannot be taken into consideration. With these submissions, he sought to dismiss the appeal.

22. In the claim statement it is stated that the deceased was aged 30 years as on the date of the accident and a vegetable vendor, and earning an amount of Rs.15,000/- per month. Except the oral evidence of P.W.1, who is the wife of the deceased and P.W.3, the Sarpanch of the village, there is no tangible evidence on record to show that the deceased was earning an amount of Rs.15,000/- per month.

23. The judgment relied on by the learned counsel for the appellants in *Syed Sadiq's* case (1 supra), seeking to grant Rs.6,500/- per month, cannot be made applicable to the facts of the present case, since the accident in the said case occurred in the year 2008 i.e., on 14.02.2008, whereas in the present case, accident occurred in the year 1999.

24. In *Laxmidhar Nayak's* case (2 supra), the Apex Court considering the accident that occurred during the year 1991 to a female agricultural labourer, has fixed the income of the deceased therein, at Rs.150/- per day and Rs.4,500/- per month.

25. The Apex Court in *RAMCHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LTD.*,[7] has taken the monthly income of a daily wager at Rs.4,500/- to an accident that occurred in the year 2004.

26. Considering the facts and circumstances of this case, this court is of the view that the monthly income of the deceased taken by the Tribunal at Rs.2,000/- per month, is very meagre, and as per the judgments of the Apex Court and having regard to avocation of the deceased, monthly income of the deceased can reasonably be taken at Rs.5,000/- per month.

27. The Tribunal has not granted any amount towards 'future prospects' on the income of the deceased. With regard to future prospects, the Apex Court in the case of *Pranay Sethi* (4 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."

28. The age of the deceased as per the claim petition and the Ex.A-3 post mortem examination report, is 30 years. As his avocation is taken as vegetable vending, he comes under self-employed. Therefore, as per the above judgment of the Apex Court, he is entitled to be awarded 40% of the established income, towards 'future prospects'.

29. The monthly income of the deceased is taken at Rs.5,000/- per month, and 40% of this income comes to Rs.2,000/-. Thus, the monthly

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[7] AIR 2011 SC 2951

income of the deceased, including future prospects, comes to Rs.7,000/- (Rs.5,000/- + Rs.2,000/-).

30. Now coming to deduction towards personal and living expenses, it is to be seen that number of dependants as per the claim statement, are five in number. The Apex Court in the case of *Sarla Verma* (3 supra), held that deduction towards personal and living expenses of the deceased should be at the rate of 1/4th, where the number of dependant family members are 4 to 6. Therefore, after deducting 1/4th towards personal expenditure, the amount, which the deceased would be contributing to his family comes to Rs.5,250/- (Rs.7,000/- (-) Rs.1,750/-) per month and Rs.63,000/- (Rs.5,250/- x 12) per annum.

31. The deceased, as per the claim statement and Ex.A-3 post mortem examination report, was aged 30 years, as on the date of the accident. Therefore, the appropriate multiplier, as per column No.4 in the table given in the judgment of the Apex Court in Sarla Verma (3 supra) is '17'. But the Tribunal has used the multiplier of '18'. The multiplier, as per the judgment of the Apex Court, is modified to '17'.

32. Thus, the loss of dependency to the claimants would come to Rs. 10,71,000/- (Rs.63,000/- x 17).

33. In Pranay Sethi's case (4 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."

34. 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 spousal consortium and the all 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.

35. The Apex Court in the Constitution Bench judgment in Pranay Sethi's case (4 supra) was answering a reference, as there was a cleavage of opinion between its two Division Bench judgments and eventually ordered for award of amount under the above said conventional amounts and held that the said amounts should be enhanced at the rate of 10% in every three years, which will obviously be from the date of the judgment of the Apex Court and at no stretch of imagination can be taken with reference to the date of the accident, since, the Apex Court has held so while answering the reference. Hence, the contention of the learned counsel for the appellant in this regard is rejected.

36. The Apex Court in the case of Magma General Ins. Co. Ltd. Nanu Ram (6 supra), while awarding amounts under the heads of 'loss of love and affection to children' and 'filial consortium', to the parents of the deceased, noted the Constitution Bench judgment of the Apex court in Pranay Sethi's case, and held as under:

> "8.7 A Constitutional Bench of this court in *Pranay Sethi*, 2017 ACJ 2700 (SC), dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium.
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> In legal parlance, 'consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.
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> The right to consortium would income the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse [*Rajesh v. Rajbir Singh,* 2013 ACJ 1403].
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> Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of 'company, society, cooperation, affection, and aid of the other in every conjugal relation. [*Black's Law Dictionary*: 5th Edn., 1979].
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> Parental consortium is granted to the child upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training'.
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> Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.
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> Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions the world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions, therefore, permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation towards loss of love, affection, care and companionship of the deceased child.

> The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where the parents have lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium.
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> Parental consortium is awarded to the children who lose their parents in motor vehicle accidents under the Act."

37. Thus the Apex Court, in the above decision, discussing the award of compensation under the head of 'loss of consortium', held that where parents have lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of 'filial consortium', and 'parental consortium' has to be awarded to the children who lose their parents in motor vehicle accidents. In the said case, the Apex Court awarded an amount of Rs.50,000/- each to the two children of the deceased therein, and Rs.40,000/- to each of the parent under the head of 'loss of filial consortium'.

38. In the present case, the deceased is married. Therefore, as per the above judgment of the Apex Court, the 4th claimant, is not entitled to be awarded compensation under the head of 'filial consortium'. The claimants 2 and 3, who are the children of the deceased are awarded an amount of Rs.50,000/- each towards parental consortium for loss of love and affection.

39. As such, the claimants are entitled to be granted compensation under the following heads:

1. Loss of dependency	-	Rs.10,71,000-00
2. Loss of consortium to 1st claimant (wife of the deceased)	-	Rs. 40,000-00
3. Loss of estate	-	Rs. 15,000-00
4. Funeral expenses	-	Rs. 15,000-00
5. Transport charges	-	Rs. 5,000-00
6. Loss of love and affection to claimants 2 and 3 (Rs.50,000/- each) parental consortium	-	Rs. 1,00,000-00
		Rs. 12,46,000-00

40. Thus, in all the claimants are granted compensation of Rs.12,46,000/- (Rupees twelve lakhs forty six thousand only), with interest

at the rate of 7.5 per cent per annum from the date of the petition till date of realization.

41. The enhanced compensation shall be apportioned in proportion to compensation awarded by Tribunal, except as indicated above.

42. In the present case, the claimants claimed Rs.5,00,000/-, but the amount granted to the claimants by this court exceeded their claim. The Apex Court in *NAGAPPA vs. GURU DAYAL SINGH*[8] 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*[9] and *RAJESH v. RAJBIR SINGH*[10]. 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.

43. 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 to be deposited by respondents.

44. The appeal is accordingly allowed to the extent indicated above.

45. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:03—04—2019

AVS

[8] (2003)2 SCC 274
[9] (2011)0 Supreme (SC) 1054
[10] (2013)9 SCC 54