HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.3005 of 2005

JUDGMENT:

This appeal is filed by the claimants/appellants against the order and decree dated 06-10-2005 passed in OP.No.260 of 2003 on the file of on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge (for short "the Tribunal), wherein and whereby the Tribunal granted an amount of Rs.1,80,000/- as against the claim of Rs.2,50,000/-, for enhancement of compensation for death of deceased Yerukala Tuljaiah in a road accident.

02. The appellants are wife, children and father of deceased Yerukala Tuljaiah respectively, who are the claimants, while respondents 1 and 2 are owner of lorry involved in the accident and insured of said vehicle respectively, in the original petition.

03. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

04. The case of the claimants is that on 29-11-2002 deceased Yerukala Tuljaiah was engaged by respondent No.1 along with other labourers to attend the labour

work on his lorry bearing No.AET 1611. The deceased was going on the lorry while the lorry was proceeding towards Zaheerabad. When the lorry reached near Primary Health School, the driver of lorry drove the same in high speed, rash and negligent manner without observing the unevenness of the road. Due to which, deceased fell on the road and received head injuries and died on the spot. The accident occurred due to rash and negligent driving of the driver of the lorry. The deceased was aged 30 years, hale and healthy at the time of the accident and he was a labourer by profession and earning an amount of Rs.2400/- per month. On the date of accident, the deceased was engaged by respondent No.1 to attend the labour work on the lorry. The deceased was the only earning member in the family. As such, petitioner No.1 is claiming Rs.25,000/- towards consortium and apart from that, all claimants are claiming Rs.2,50,000/- under different heads towards compensation against the respondents. Respondent No.1 is the owner of the lorry and respondent No.2 is the insurer to the lorry. It is also stated that deceased died during the course of employment of respondent No.1 at the time of accident. The Police Jharasangam registered a case in Cr.No.59 of 2002 for the offence under Section 304-A IPC against the driver of the lorry.

05. Respondent No.1 resisted the claim of the claimants admitting that he is the owner of the lorry bearing No.AET 1611 and denied the other allegations made in the claim petition. On 29-11-2002 the driver of the lorry was proceeding in a normal speed and on correct side of the road and it was very slow in speed along with labourers going towards Primary Health Centre, Jharasangam. Since the road was uneven, the driver applied sudden brakes, due to unevenness the deceased fell down on the road and died on the spot. There is no negligence on the part of the driver. It is also stated that injuries mentioned in Column No.11 of the claim petition were not caused due to the negligent driving of the lorry driver. The claim of the petitioners is excessive. Further the driver of the lorry is having valid driving licence to drive the lorry. The accident occurred during the coverage of the policy issued by respondent No.2, as such respondent No.2 is liable to pay the compensation to the claimant, if any, awarded in this case.

06. Respondent No.2 resisted the claim of the claimants by denying the involvement of lorry in question on the alleged date in the alleged accident, manner of accident,

as described in the petition, and the alleged negligence or rashness on the part of the driver is also denied. It is also stated that deceased himself was responsible for the accident and he himself contributed for the accident. The alleged accident occurred due to the fault of deceased himself. It is denied that the claimants are sole legal heirs of deceased. It is also denied that lorry bearing No.AET 1611 involved in the accident is insured with this respondent-company. This respondent also denied the age, occupation and income of deceased and that the driver of the lorry was having valid driving licence and the said lorry was road worthy to ply at the time of accident. Further the deceased was going in the lorry as unauthorized passenger and against the terms and conditions of the policy, as such respondent No.2 is not liable to pay any compensation to the claimants. The claim of Rs.2,50,000/- claimed by claimants is arbitrary and excessive.

07. On the basis of above pleadings, the following points have been framed by the Tribunal:

1. Whether the accident took place on account of rash and negligent driving of the driver of the Lorry bearing No.AET 1611 resulting death of the deceased Tuljaiah?

2. What is the quantum of compensation the claimants are entitled to?

3. To what relief?

08. The Tribunal on consideration of evidence of PWs 1 and 2 examined on behalf of claimants and Exs A-1 to A-4 and Ex.B.1 granted an amount of Rs.1,80,000/- towards compensation.

09. While deciding the compensation under the head of loss of dependency, the Tribunal has taken the income of deceased at Rs.15,000/- after deducting 1/3rd towards personal expenses, calculated loss of dependency by applying multiplier '17' and which was arrived at Rs.1,70,000/-. The Tribunal has awarded Rs.5,000/- towards loss of consortium, Rs.5,000/- towards loss of estate and in all granted Rs.1,80,000/- towards compensation with interest at 7.5% per annum from the date of filing of petition till the date of realization, out of claim of Rs.2.50 lakhs. Against same, the present appeal is filed by the appellants.

10. Since the appeal is filed for enhancement of compensation, as already other issues are in favour of the claimants, the only point that arises for consideration is whether compensation granted by the Tribunal is required to be enhanced or not?

11. The Tribunal while dealing with point No.2, has taken the income of deceased at Rs.15,000/- per annum stating that no proof of income was produced by the claimants. But the Apex Court in ***Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited***[1] took the income of a daily wage earner as Rs.4500/- per month. In that case, accident occurred in the year 2004, in the present case accident occurred in the year 2002. The claimants have stated that deceased was earning Rs.2400/- per month, as such the same can be accepted. Further deceased is stated to have been 35 years old by the time of accident, but the Tribunal has taken multiplier '17' instead of '16' and after deducting 1/3rd was deducted towards personal expenses awarded Rs.1,70,000/- towards loss of dependency. As per judgment of Apex Court in **Sarla Verma v. Delhi Transport Corporation**[2], multiplier '16' has to be adopted for the age group of 31 to 35 years. Since the claimants are five in number, 1/4th of the income of deceased is to be deducted towards personal expenses instead of 1/3rd deduction as done by the Tribunal. Then the contribution of deceased to his family comes to Rs.1800 per month and Rs.21,600/-

[1] 2011 (6) ALT 48 (SC)
[2] 2009(6) SCC 121

per annum. As per the judgment of **Sarla Verma**, the relevant multiplier is "16" as the age of deceased is 35 years. Therefore, by taking the earnings of the deceased at Rs.1800/- per month and Rs.21600/- per annum, if the relevant multiplier "16" is adopted (Rs.21600/- x 16), loss of dependency comes to Rs.3,45,600/-. No amount was granted by the Tribunal towards loss of future prospects. In this case, deceased is stated to have been aged 35 years and he is earning Rs.2,400/- per month. It is the case of the claimants that deceased was a labourer by profession and earning an amount of Rs.2400/- per month. Since deceased is a fixed wage earner, the appellants are entitled for future prospects at 40%, which comes to Rs.1,38,240/-and the same is also granted to the appellants.

12. That apart, as per the ratio laid down by Supreme Court in **National Insurance Company Limited v. Pranay Sethi**[3] the appellant No.1 is entitled for an amount of Rs.40,000/- towards loss of consortium and appellants 2 to 4 who are children of deceased are entitled for Rs.50,000/- each towards parental consortium and Rs.40,000/- to appellant No.5 being father of deceased towards filial consortium as per

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[3] 2017 Law Suit (SC) 1093

judgment of **Magma General Insurance Company Ltd. v. Nanu Ram**[4] The claimants are also entitled for Rs.30,000/- towards loss of estate and funeral expenses. The amounts awarded to the claimants under various heads are as follows:

Loss of dependency	Rs.3,45,600/-
Future prospects	Rs.1,38,240/-
Loss of consortium	Rs.40,000/-
Loss of estate & funeral expenses	Rs.30,000/-
Parental consortium	Rs.1,50,000/-
Filial consortium	Rs.40,000/-
Total	Rs.7,43,840/-

[4] 2018 ACJ 2782

13. Thus in all, the appellants are entitled for Rs.7,43,840/- towards compensation as against Rs.1,80,000/- granted by the Tribunal.

14. Though the compensation claimed by the appellants before the Tribunal was only for Rs.2,50,000/- lakhs, in view of the judgment of Supreme Court in **Nagappa v. Gurudayal Singh**[5]**,** there is no restriction that the compensation should be awarded only upto the claim made by the appellants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.7,43,840/-.

15. Accordingly, the appeal is allowed enhancing the compensation from Rs.1,80,000/- to Rs.7,43,840/- payable by the respondents jointly and severally. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Supreme Court in **Rajesh v. Rajbir**[6], the same rate of interest is awarded on the enhanced amount from the date of claim petition till realisation.

16. The enhanced compensation, other than specifically awarded, shall be apportioned among the claimants in the same proportion in which the original compensation

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[5] (2003) 2 SCC 274
[6] 2013ACJ 1403=2013(4) ALT 35

was directed to be apportioned and disbursed by the Tribunal.

17. The Tribunal shall deduct the difference of Court fee on the enhanced amount of compensation. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A.RAJASHEKER REDDY,J

02-04-2019

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