HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.1488 of 2005

JUDGMENT:

The National Insurance Company Limited, which is arrayed as 2nd and 3rd respondents in MVOP.No.1119/2001 on the file of the III Motor Accidents Claims Tribunal, Warangal (for short 'the Tribunal'), preferred the instant appeal having got aggrieved by the said award, whereby and whereunder, the Tribunal has granted a sum of Rs.5,06,500/- with interest at 9% per annum. The claimants are respondents 1 to 4 and the owner of the vehicle is the 5th respondent in the present appeal.

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

3. The fact-situation occurring in the instant case is that on 15/16.08.2001 at about 12.30 p.m. when the deceased Marepally Chiranjeevi was traveling on Suzuki Motor Cycle bearing No.AEO 85, one TATA Sumo bearing No.APO 9 AD 7367 came in a rash and negligent manner and dashed the motor cycle of the deceased, due to which the said Chiranjeevi received serious injuries and succumbed to injuries. The deceased Chiranjeevi was aged 22 years and was an Artist, Sub-contractor for wall advertisements, sign boards and banners and earning an amount of Rs.5,000/- per month. Therefore, the petitioners who are legal heirs of the deceased claimed

compensation of Rs.6,90,000/- but restricted their claim to Rs.3,00,000/-.

4. The 1st respondent-owner of the vehicle filed counter stating that the deceased himself was responsible for the alleged accident; that the 1st respondent is not at all responsible to pay any compensation; and that the claim of the petitioners is excessive.

5. The 3rd respondent filed counter denying the place and manner of the accident. It also denied the age, occupation and income of the deceased. It submits that this respondent is not liable to pay any compensation unless and until the person at the wheels of the vehicle was having valid and effective driving licence to drive such vehicle and the vehicle was road worthy to ply. It is also alleged that the compensation claimed by the petitioners is excessive and hence prayed to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During the enquiry before the Tribunal, on behalf of petitioners the petitioner No.1 was examined himself as PW1 and one Md.Naveed who is an eye-witness was examined as PW2 and Exhibits A1 to A5 were marked. On behalf of respondents RW1-the Senior Assistant working in respondent-insurance company was examined and Ex.B1-Insurance Policy was marked.

7. The Tribunal, on issue No.1, on appraisal of both oral and documentary evidence, arrived at the conclusion that only due to rash and negligent driving of the driver of the Tata Sumo bearing No.APO 9 AD 7367, accident had occurred and held it in favour of the petitioners.

8. On issue No.2, the Tribunal, basing on Ex.A3-Post Mortem Examination Report has taken the age of the deceased as '22' years and taken the income of the deceased at Rs.4,500/- per month and Rs.54,000/- p.a. on the basis of average estimate of Rs.150/- per day treating the deceased as skilled labourer. After deducting 1/3rd of the income from the said amount towards self sustenance of the deceased, calculated the contribution of the deceased to his family at Rs.36,000/-. Regarding multiplier the tribunal has taken '14' as multiplier and awarded an amount of Rs.5,04,000/- (36,000 x 14) towards loss of contribution to the family of the deceased. The Tribunal has awarded an amount of Rs.2,500/- towards funeral expenses and awarded a total compensation of Rs.5,06,500/- to the petitioners.

9. Learned counsel for the appellant submits that the Tribunal has taken the income of the deceased at Rs.4,500/- per month treating him as skilled labour and also basing on Ex.A5-Certificate issued by the Warangal district Creative Artists Association, though nobody was examined to prove the

said certificate. He also submits that the correct multiplier that has to be taken is ’10.45’, but the Tribunal basing on second schedule of the M.V.Act, 1988 has taken the multiplier as ‘14’ though the income of the deceased is more than Rs.4 lakhs. He further submits that though the petitioners restricted their claim to Rs.3 lakhs, the Tribunal has awarded compensation at Rs.5,06,500/-.

10. In this case it is to be seen that though the claim of the petitioners was Rs.6,90,000/- as per the Judgment of the Tribunal the claim was restricted to Rs.3 lakhs. It is settled law that the Tribunal can grant just compensation and grant more than the amount claimed by the petitioners as per the Judgment in ***Adam Indur Muttemma and others v. Rathod Reddia and others,*** **2015 (4) SCC 237,** wherein it is stated that there is no bar in granting just compensation in excess of the claim made by the petitioners subject to payment of court fee on the additional amount granted. The Tribunal has considered the said aspect and granted compensation of Rs.5,06,500/- directing the petitioners to pay deficit court fee.

11. As far as quantum of compensation is concerned, the Tribunal basing on Ex.A5, has taken Rs.4,500/- as income of the deceased, treating the petitioner as skilled labour by taking minimum wages into account. Even otherwise, the Apex Court in a catena of decisions has stated that even for a ‘coolie’ the

monthly income has to be taken at Rs.4,000/-. In one case when the Tribunal has reduced the income from Rs.4,500/- to Rs.3,000/- the Apex Court found fault with the same in ***Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. reported in (2011) 13 SCC 236***, and held as under*: (SCC pp.242-43, paras 13-15)*

> *"13. In the instant case, it is not in dispute that the appellant was aged 35 years and was working as a coolie and was earning Rs.4,500/-per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs.100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the Court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.*
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> *14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting*

material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork. Which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a coolie and in an around the date of the accident, the wage of a labourer was between Rs.100 to Rs.150 per day or Rs.4,500 per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4,500 to Rs.3,000 per month. We therefore, accept his statement that his monthly earning was Rs.4,500.

12. In view of the aforesaid Judgment it can be said that the Tribunal has rightly determined the income of the deceased at Rs.4,500/- and Rs.54,000/- p.a.

13. As contended by the learned counsel for respondents/claimants no amount was granted towards loss of future prospects of the deceased as held by the Apex Court in ***National Insurance Company Limited v. Pranay Sethi and others*** (2017 ACJ 2700 = AIR 2017 SC 5157). The Apex Court has held that an amount of Rs.70,000/- has to be granted towards consortium, loss of estate, funeral expenses and Transportation charges. But, the Tribunal has granted Rs.2,500/- towards funeral expenses. Learned counsel for

respondents/claimants submits that multiplier '18' has to be taken since the deceased is aged 22 years as per the Judgment of Apex Court in ***Sarla Verma and others v. Delhi Transport Corporation and Another (2009) 6 SCC 121.*** But the Tribunal has taken the multiplier as '14' as per the second schedule to Section 163-A of the M.V.Act. If the above factors are taken into account as contended by the learned counsel for respondents/claimants, the respondents would be entitled to compensation as follows;

Income of the deceased per month	4,500
Add: 40% towards future prospects	1,800
	6,300 P.M.
Less: ½ of the amount towards personal expenses of the deceased	3,150
Contribution of the deceased to the family	3,150

When multiplier '18' is adopted, loss of contribution of the deceased to his family comes to Rs.6,80,400 (3,150 x 12 x 18) and an amount of Rs.30,000/- should be granted towards loss of estate, funeral expenses and transport charges which works out to Rs.7,10,400/-.

14. When the above factors are taken into account, the respondents are entitled to more than the amount of Rs.5,06,500/- awarded by the Tribunal. As such, the quantum of compensation granted by the Tribunal need not be reduced.

15. In view of the aforesaid facts and circumstances, I do not see any reason to interfere with the award of compensation granted by the Tribunal. Accordingly, the appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the appeal, stand disposed of.

A.RAJASHEKER REDDY, J

21st January, 2019
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