THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.2932 OF 2005

JUDGMENT

This appeal is filed by the claimants, against the award and decree dated 30-08-2004 passed by the court of IV Additional Metropolitan Sessions Judge, Hyderabad – cum – XVIII Additional Chief Judge, Hyderabad in O.P.No.2604 of 2002, seeking enhancement of compensation.

The claimants are the wife and children of the deceased. Their case is that the deceased – Venkat Reddy, was an employee in Nagasai Coach Builders, Jeedimetla and he was also selling milk as a part time job and thus earning an amount of Rs.4,000/- per month. On 27-07-2002, while the deceased was proceeding on his scooter bearing No. AP 28 J 5621 from Moosapet towards Balanagar, and that when he reached Godrej x roads at Kukatpally at 6.30 a.m., a rig mounted lorry bearing No. AP 10 D 3524, came in a rash and negligent manner at high speed in the opposite direction and dashed against the scooter of the deceased, as a result, the deceased fell down and sustained injuries, and died at about 9.45 a.m., after he was shifted to Gandhi Hospital for treatment. With these averments, the claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.3,50,000/-.

The first respondent – insured, remained *ex parte* and the 2nd respondent – insurance company filed counter affidavit and denied its liability.

The Tribunal considering the evidence of eye witness to the accident, who was examined as P.W.2, and also taking into consideration

Exs.A-1 to A-3, which are copies of FIR, inquest report and postmortem report, held that the accident occurred due to rash and negligent driving of the driver of the crime lorry and that the deceased died in the said accident.

As the claimants have not produced any evidence with regard to income of the deceased, the Tribunal has taken his income as Rs.3,000/- per month and deducting 1/3rd towards personal expenses and applying the multiplier of '13', as per second schedule to Section 163-A of the Act as the deceased was aged 48 years, arrived at the loss of earnings of the deceased at Rs.3,12,000/-. The Tribunal further granted an amount of Rs.5,000/- towards transportation and funeral charges. Thus, in all, the Tribunal granted an amount of Rs.3,17,000/- with interest at the rate of 9 per annum from the date of the petition till the date of realization and passed orders with regard to apportionment and withdrawal.

Not being satisfied with the compensation granted by the Tribunal, the claimants filed the present appeal.

Learned counsel for the appellants submit that the deceased was an employee of Nagasai Coach Buildings, Jeedimetal and he was also selling milk and earning an amount of Rs.4,000/- per month, but the court below has taken the income of the deceased as Rs.3,000/-, which is very low, and the income as claimed by the claimants may be allowed. He further submits that as per the judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LTD. v. PRANAY SETHI*[1], the claimants are entitled to 'future prospects' on the income of the deceased at 25%, as the deceased was aged 48 years as on the date of the accident, but the Tribunal has not awarded any amount under the said head. He further

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[1] AIR 2017 SC 5157

submitted that under the above judgment of the Apex Court, the 1st claimant who is the wife of the deceased is entitled to Rs.40,000/- towards 'loss of consortium' and all the claimants are entitled to Rs.30,000/- under the heads of 'loss of estate' and 'funeral charges', but the Tribunal has awarded only an amount of Rs.5,000/-, under the said heads, which is very meagre and same may accordingly be enhanced.

Sri R.Venkat Rao, appearing for the 2nd respondent – insurance company submitted that the claimants have not produced any evidence towards the income of the deceased, therefore, the Tribunal, making guess work, has taken the income of the deceased at Rs.3,000/- per month and by applying the appropriate multiplier, arrived at loss of dependency and awarded appropriate amounts under other heads. Therefore, he sought to dismiss the appeal.

In the present case, there is no dispute that the accident occurred due to the rash and negligent driving of the driver of the crime lorry and the deceased died in the said accident. The dispute is with regard to quantum of compensation.

In the claim petition it is stated that the deceased was an employee in a firm and was also selling milk, and thus in all earning an amount of Rs.4,000/- per month. But they could not produce any tangible evidence. The Hon'ble Supreme Court in the case of *RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED*[2] has taken the monthly income of a daily wager at Rs.4,500/-. Since, the claimants claimed that the deceased was earning an amount of Rs.4,000/-, it is justifiable to take the said amount as the monthly income

[2] AIR 2011 SC 2951

of the deceased and the income fixed by the Tribunal is accordingly modified.

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."

In the present case, as per the claim petition, the deceased was aged 48 years, as on the date of the accident. As per the above judgment of the Apex Court, an addition of 25% has to be made to the salary of the deceased towards future prospects.

As noted above, the monthly income of the deceased is taken as Rs.4,000/- and if 25% of this income (Rs.1,000/-) is added towards future prospects, it would come to Rs.5,000/- and out of this amount if 1/3rd is deducted, the amount that the deceased would be contributing to his family, will come to Rs.3,333/- per month and Rs.39,996/- per annum.

The deceased was aged 48 years, and as per the judgment of the Apex Court in *SARALA VERMA v. DELHI TRANSPORT CORPORATION*[3], the appropriate multiplier for the age group of the deceased is '13' and the court below has rightly applied the multiplier. Thus, the claimants would be entitled to Rs.5,19,948/- (Rs.39,996/- x 13) and accordingly, the said amount is awarded towards loss of dependency.

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[3] (2009)6 SCC 121

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 is granted an amount of Rs.40,000/- towards loss of consortium and the all claimants are granted an amount of Rs.30,000/- towards loss of estate and funeral expenses and the amounts granted by the Tribunal under these heads is accordingly enhanced. Thus the claimants are granted an amount of Rs.5,89,948/- (Rs.5,19,948/- + Rs.70,000/-).

The claimants have claimed an amount of Rs.3,50,000/-, but as per the material on record and the precedents, this court found that claimants are entitled to more compensation than claimed, which in the considered opinion on this court is just and fair. 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 as arrived at, though the same exceeds the claim of the appellants.

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

For the foregoing reasons, the compensation granted by the Tribunal is enhanced from Rs.3,17,000/- to Rs.5,89,948/- (Rupees five lakhs, eighty nine thousand, nine hundred and forty eighty only), with interest at the rate of 7.5 per cent per annum from the date of the petition till the date of realization.

The apportionment shall be as ordered by the Tribunal.

The Tribunal is directed to deduct the differential amount of court fee at the time of disbursement of the amount to the claimants.

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:21—02—2019
AVS