THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.1892 OF 2005

JUDGMENT

Not being satisfied with the compensation granted by the Motor Accidents Claims Tribunal, Rangareddy at L.B. Nagar, Hyderabad in O.P.No.423 of 2000 dated 01.04.2004, for the death of the Mohd. Feroz, in the motor accident that occurred on 19.02.2000, the claimants, who are his wife, children and mother, filed the present appeal.

2. The case of the claimants before the Tribunal was that on 19.02.2000 at about 4.45 pm., while the deceased – Mohd. Feroz Hussain @ Mohd. Khasim, was proceeding on his auto trolley bearing No. A.E.T. 2114, from Osman Gunj, towards Hydernagar side, truck bearing No. APB 0734 belonging to the then Andhra Pradesh State Electricity Board, came from behind and dashed the auto trolley and due to the impact, the deceased fell down on the road and received grievous head injury and died on the spot. The further case of the claimants is that accident occurred due to rash and negligent driving of the driver of the said truck. Police Kukatpally registered a case in Cr.No.96 of 2000, under Section 304-A of IPC against the driver of the offending truck.

3. Their case is that the deceased was aged 40 years as on the date of the accident and the 1st claimant is his wife, claimants 2 to 5 are their children and 6th claimant is the mother of the deceased and that they are all dependant on the income of the deceased, who was earning an amount of Rs.3,000/- per month and contributing the same to the family and that due to untimely death of the deceased , they suffered mental agony and that the 1st claimant lost her company and claimants

2 to 5, lost the love and affection and guidance of their father and the claimant No.6, lost her son.

4. With these averments, claimants filed claim petition under Section 166 of Motor Vehicles Act, claiming an amount of Rs.3,00,000/- towards compensation against the owner of the vehicle and its insurer.

5. The 1st respondent – A.P. Transco, owner of the vehicle, did not file any counter affidavit and the 2nd respondent – insurer, filed counter affidavit, *inter alia* denying manner of accident as pleaded by the claimants, age, avocation and income of the deceased and the dependency of the claimants, and sought to dismiss the claim petition.

6. The Tribunal based on rival contentions, framed the following issues for trial:

1. Whether the petitioners are entitled for any compensation and interest, if any, and, if so to what amount, and at what rate, and for what period?
2. Whether the R1 and R2 are liable to pay any part of monies covered by issue No.1, supra?
3. To what relief.

7. In support of the case of the claimants, the wife of the deceased was examined as P.W.1 and one Sri Mohd Muneer, who is stated to have witnessed the accident, was examined as P.W.2, and on their behalf Exs.A-1 to A-6, which are attested copies of FIR, inquest report, postmortem examination report, motor vehicle inspector report, charge sheet and rough sketch, were marked. On behalf of respondents, no oral evidence was lead, and only copy of insurance policy was marked as Ex.B-1.

8. Appreciating the entire evidence, both oral and documentary, the Tribunal held that the accident occurred due to rash and negligent driving of the offending truck.

9. The Tribunal, taking the income of the deceased at Rs.2,500/- per month and deducting 1/3rd towards his personal expenses, arrived at Rs.20,004/- per annum towards the contribution of the deceased towards his family, and further taking the age of the deceased as 40, as stated by the claimants, applying the multiplier of 12, granted an amount of Rs.2,40,048/- towards loss of dependency. The Tribunal further awarded an amount of Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses, and thus in all awarded an amount of Rs.2,52,048/-, with interest at rate of 9 per cent per annum from the date of the award till the date of payment and passed orders with regard to apportionment , deposit and withdrawal.

10. As noted above, not being satisfied with the compensation awarded by the Tribunal, the claimants filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement.

11. Learned counsel appearing for the claimants contended that the deceased was an auto driver and the accident occurred while he was driving his auto with a trolley and in the said accident, which occurred due to rash and negligent driving of the offending truck, he died on the spot. The deceased was earning an amount of Rs.3,000/- per month and was contributing the income to his family. The wife of the deceased, who was examined as P.W.1, has categorically deposed to this effect and the respondents have not lead any rebuttal evidence. Therefore, the Tribunal, ought to have taken the income of the deceased at Rs.3,000/- per month. He stated that even as per G.O.Ms.No.30, Labour and Employment dated 27.07.2000, minimum wages to a driver, shall have to be taken as Rs.1,875/-, towards basic pay and an amount of Rs.1,060/-

has to be added towards VDI and thus, in all, the earnings of the deceased have to be taken as Rs.2,934/- per month. But the Tribunal has taken the monthly income of the deceased as Rs.2,500/-, and the same requires to be enhanced. He stated that the deceased was aged 40 years, and as per the judgment of the Apex Court in *SARALA VERMA v. DELHI TRANSPORT CORPORATION*[1], the appropriate multiplier, as per column No.4 of the table given in the said judgment, would be '15', but the Tribunal, has used the multiplier of '12'. Therefore, he sought to extend appropriate multiplier. He submits that the claimants, who are dependants on the income of the deceased are six in number and in view of the same, the deduction towards personal and living expenses out of the income of the deceased, as per the above judgment of the Apex Court, shall be 1/4th, but the Tribunal, deducted 1/3rd and hence the deduction shall be made at the rate of 1/4th. Learned counsel further relying on an another judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LTD. v. PRANAY SETHI*[2], submits that , for the age group of the deceased, who is 40, while arriving at the loss of dependency, an additional amount of 40% of the established income of the deceased, has to be added, towards future prospects, but the Tribunal has not awarded the said amount. He further submits that the Tribunal granted meager amounts of Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses. He submits that as per the judgment of the Apex Court in Peranay Sethi (2 supra), the claimants are entitled to Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses, thus, in all, the claimants, are entitled to Rs.70,000/- under the conventional heads as per the judgment of the Apex Court. He further submits that the

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[1] (2009)6 SCC 121
[2] AIR 2017 SC 5157

claimants are entitled to interest on the compensation amount from the date of the claim petition, till date of realization, but the Tribunal, without assigning any reasons, granted interest on the compensation amount from the date of award till date of deposit. Therefore, the learned counsel sought to grant interest from the date of claim petition till date of deposit. He submits that though the claimants claimed only an amount of Rs.3,00,000/-, in view of the judgment of the Apex Court, as they would be entitled to more amount, which is 'just', the same may be awarded. With these submissions, he sought to allow the appeal.

12. Learned counsel for the claimants further submit that during the pendency of the appeal, the mother of the deceased, who is the 6th appellant in the appeal, died, and as all the legal heirs of the deceased were already on record, endorsement in the cause title is made to the effect that the said appellant is not a necessary party. He submits that if this court orders for enhancement of compensation, the apportionment may be directed to be made in the same proportion as ordered by the Tribunal, among the claimants 1 to 5, who are already on record.

13. On the other hand, Sri N.J.Sunil Kumar, learned Standing Counsel appearing for the 2nd respondent – insurance company, submits that though the claimants claimed that the deceased was earning an amount of Rs.3,000/-, have not produced any evidence, therefore, the Tribunal, has reasonable taken the monthly income of the deceased at Rs.2,500/- per month and the same may not be interfered with. He further submitted that the Apex Court and this court have been granting interest on the compensation amount at the rate of 7.5 per cent, but the Tribunal awarded 9 per cent interest, and the same may be reduced.

14. Heard Sri R.Vinod Reddy, learned Standing Counsel for the 1st respondent – TRANSCO.

15. In the present appeal, there is no dispute with regard to manner of accident and the dispute is only with regard to quantum.

16. There is no dispute that the deceased herein is an auto driver. Except oral evidence that the deceased was earning an amount of Rs.3,000/- per month, the claimants have not produced any tangible material. However, the Government issued G.O.Ms.No.30, Labour and Employment, dated 27.07.2000, fixing the mimum wages. As per the said G.O., the driver would be entitled to basic pay of Rs.1,875 and VDI of Rs.1,060/-, thus, in all Rs.2,934/- per month. If the said amount is rounded off, it would come to Rs.3,000/- per month. In view of the said G.O., the income of Rs.2,500/- taken by the Tribunal, requires to be enhanced and accordingly, the monthly income of the deceased is taken as Rs.3,000/-.

17. 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."

18. In the present case, as per the claim petition, the deceased was aged 40 years, as on the date of the accident. As per the above judgment of the Apex Court, an addition of 25% has to be added to the established income of the deceased, i.e., Rs.3,000/-, towards future prospects. 25% of Rs.3,000/-, comes to Rs.750/-. Thus, the monthly income

of the deceased after addition of future prospects, would come to Rs.3,750/- (Rs.3,000/- + Rs.750/-).

19. The Apex Court in Sarala Varma, (supra), held that if the number of dependants of the deceased are between 4 to 6, the deduction to be made towards his personal and living expenses, should be 1/4th. In the present case, the claimants, who are the dependants on the income of the deceased, are five in number. Therefore, from out of the monthly income arrived at by this court i.e., Rs.3,750/-, only 1/4th, shall be deducted, towards the personal expenses of the deceased, but the Tribunal deduced 1/3rd, which requires to be modified. 1/4th of 3,750/- would come to Rs.937.50 and the same is rounded off to Rs.938/-. If the said amount is deducted from the above monthly income, the amount, which the deceased would be contributing to his family comes to Rs.2,812/- (Rs.3,750/- (-) Rs.938/-) per month and Rs.33,744/- per annum.

20. The deceased was aged 40 years as on the date of the accident. As per column No.4 of the table given in the judgment of the Apex Court in Sarla Verma (supra), the appropriate multiplier, that has to be used, is '15'. Thus, the claimants are entitled to Rs.5,06,160/- (Rs.33,744/- x 15), towards loss of dependency.

21. 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."

21. 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 all the claimants are granted an amount of Rs.15,000/- each under the heads of 'loss of estate' and 'funeral expenses'.

22. The Apex Court in *TAMILNADU STATE TRANSPORT CORPORATION LIMITED vs. S.RAJAPRIYA*[3] held that interest on the compensation amount shall be at the rate of 7.5 per cent per annum. In view of the same, interest at the rate of 7.5 per cent per annum is granted on the enhanced compensation amount from the date of petition, till deposit.

23. The claimants are entitled to interest on the compensation amount from the date of the claim petition till the date of realization at the rate of 7.5 per cent, but the Tribunal granted interest from the date of the award, till date of payment. The same is accordingly modified.

24. The other circumstance that is required to be considered is that the claim petition is filed for an amount of Rs.3,00,000/- but this court found that the claimant is entitled to more compensation than claimed, which 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 Motor Vehicles Act, 1988. This principle of law has been reiterated in several subsequent judgments of the Apex Court in the case of *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

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[3] 2005(4) ALT 14 (SC)
[4] (2003)2 SCC 274
[5] (2011)0 Supreme (SC) 1054
[6] (2013)9 SCC 54

inclined to grant the just compensation arrived at, though the same exceeds the claim of the appellants.

25. For the foregoing reasons, the compensation granted by the Tribunal is enhanced, and the claimants are granted an amount of Rs.5,76,160/- (Rupees five lakhs seventy six thousand, one hundred and sixty only) (Rs.5,06,160/- + Rs.70,000/-), with interest at the rate of 7.5 per cent per annum from the date of the petition till the date of realization.

26. The apportionment of the amount shall be in the same proportion as ordered by the Tribunal. However, as the mother of the deceased died, the claimants who are the wife and children of the deceased, are entitled to the share of the 6th appellant herein, in the same proportion.

27. The claimants are permitted to withdraw the compensation amount.

28. The Tribunal is directed to deduct the differential amount of court fee on the amount in excess of claim made, at the time of disbursement of enhanced compensation amount to the claimants.

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

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

A.RAJASHEKER REDDY,J

DATE:19—02—2019
AVS