THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.3033 OF 2005

JUDGMENT

This appeal is filed by the claimants against the award and the decree dated 16-08-2005 passed by the court of Additional Metropolitan Sessions Judge for Trial of Jubilee Hills Car Bomb Blast Case – cum – Additional Family Court – cum – XXIII Additional Chief Judge, Red Hills, Nampally, at Hyderabad in O.P.No.48 of 2002, seeking enhancement of compensation, wherein and whereby, the Tribunal granted compensation of Rs.7,17,000/-, as against the claim of Rs.15,00,000/-.

2. The 1st claimant is the wife of the deceased, claimants 2 to 4 are children of the deceased and claimants 5 and 6 are the parents of the deceased. During the pendency of the claim petition, the 6th claimant who is the father of the deceased, died.

3. In the claim petition it is stated that on 13.09.2001 at about 10-15 hours, when the deceased along with his colleague was proceeding on his Hero Honda Cycle bearing No. AP 10Q 5989 from Kothur to Hyderabad side, on office duty, and that when they reached Venkateshwar Seeds Food Factory on N.H.7, matador van bearing No. KA 38 581, coming from Hyderabad side, in a rash and negligent manner, with high speed, without following traffic rules, dashed the Hero Honda vehicle. As a result, the deceased fell down and sustained grievous injuries. Immediately, he was shifted to Yashoda hospital, where he succumbed to injuries on the same day night.

4. The police at Kothur Police Station, registered a case against the driver of the matador van in Cr.No.133/2001, under Sections 304-A and 338 IPC.

5. The case of the claimants is that the deceased was hale and healthy and was working as Regional Manager, TTK Company, and earning an amount of Rs.12,000/- per month, and was contributing the entire income to the family and because of his sudden demise, they became destitute.

6. With the above averments, the claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 and the Rules made thereunder, claiming compensation of Rs.15,00,000/- with costs and interest at the rate of 24% per annum from the date of death of the deceased, till payment of compensation.

7. The owner of the crime vehicle remained *ex parte*.

8. The insurer of the crime vehicle, filed counter affidavit and while *inter alia* denying the age, avocation, income, manner of accident, as pleaded by the claimants, and further contending that the owner of the vehicle was not having valid licence and that the compensation claimed is excessive, sought for dismissal of claim petition.

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

1. Whether the accident in question took place on 13.09.2001 at about 10.15 a.m. due to rash and negligent driving of the driver of the matador bearing No. KA 38/581?
2. Whether the petitioners are entitled to the compensation, if so, to what amount and from whom?
3. To what relief?

10. In support of the case of the claimants, the wife of the deceased was examined as P.W.1 and the eyewitness, who happened to be working in the office of the deceased, was examined as P.W.2. Exs.A-1 to A-8 were marked on behalf of the claimants.

11. On behalf of the insurance company, Ex.B-1 copy of the insurance policy was marked as Ex.B-1 with consent and the validity of which is from

15.09.2000 to mid night of 14.09.2001. No oral evidence was adduced on behalf of the insurance company.

12. Considering the evidence of P.W.2, who is the eye witness to the accident, and Exs.A-1, A-2, A-4 and A-6, which are the certified copies of FIR, motor vehicle inspector report, charge sheet and driving licence of the accused, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and that deceased died of hemorrhage and shock due to multiple injuries caused in the accident.

13. Taking the income of the deceased as Rs.6,000/- per month and deducting 1/3rd towards his personal expenses, and applying the multiplier of 14, as the deceased was aged 41 years as on the date of the accident, the Tribunal arrived at total loss of earning of the deceased at Rs.6,72,000/-. The Tribunal further awarded an amount of Rs.15,000/- towards loss of estate, Rs.15,000/- towards loss of consortium to 1st claimant, Rs.10,000/- to claimants 2 to 4 towards loss of love and affection and Rs.5,000/- towards transport and funeral expenses. Thus, in all, the Tribunal awarded an amount of Rs.7,17,000/- with interest at the rate of 6 per cent per annum from the date of the petition till date of realization. The Tribunal also passed orders with regard to apportionment of compensation among the claimants and its mode and manner of deposit, and withdrawal.

14. As already noted above, not being satisfied with the compensation granted by the Tribunal, claimants filed the present appeal.

15. Learned counsel appearing for the claimants submit that the deceased was working in TTK company since 1988 and as on the date of the accident, he was Regional Manager in the said company, and was earning Rs.12,000/- per month. To prove the same, the wife of the deceased was examined as P.W.1 and the colleague, who was working with the deceased, was examined as P.W.2 and they also got marked Ex.A-5, salary certificate of the deceased issued by the employer, but the Tribunal, disbelieving the

same, has taken the salary of the deceased at Rs.6,000/- per month, which is very meagre and, therefore, he sought to take the salary of the deceased as Rs.12,000/- per month, as per Ex.A-5.

16. Learned counsel relying on the judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LTD. v. PRANAY SETHI*[1], submits that, for the age group of the deceased, who was 41, while arriving at the loss of dependency, an additional amount of 25% of the established income of the deceased, has to be added, towards future prospects, but the Tribunal has not awarded the said amount.

17. Learned counsel did not dispute the multiplier '14' applied by the Tribunal, but disputed the deduction towards personal expenses at the rate of 1/3rd. He submits that the dependants of the deceased, are five in number and, therefore, the deduction towards personal expenses, as per the judgment of the Apex court in *SARALA VERMA v. DELHI TRANSPORT CORPORATION*[2], shall be at the rate of 1/4th, but not 1/3rd.

18. He submits that as per the judgment of the Apex Court in *Pranay Sethi's* case (1 supra), the 1st claimant is entitled to Rs.40,000/- towards loss of consortium and the claimants are entitled to Rs.15,000/- each under the heads of 'loss of estate' and 'funeral expenses', but the Tribunal, though awarded Rs.15,000/- towards loss of estate, awarded Rs.15,000/- towards loss of consortium and Rs.5,000/- under the heads of transportation and funeral charges, which requires enhancement as per the judgment of the Apex court.

19. Learned counsel for the appellants further submits that the claimants 2 to 4, who are the children of the deceased, lost the love and affection of the deceased, who is their father due to his sudden death. As per the judgment of the Apex Court in *MAGMA GENERAL INSURANCE CO.*

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

LTD v. NANU RAM[3], these claimants are entitled to Rs.50,000/- each towards loss of love and affection and thus, they are entitled to Rs.1,50,000/- under this head, but the Tribunal awarded only an amount of Rs.10,000/- and the same may accordingly be enhanced.

20. With the above submissions, learned counsel for the appellants / claimants sought to enhance the compensation.

21. On the other hand, Sri Kota Subba Rao, 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.12,000/- per month as Regional Manager of TTK Company and relied on Ex.A-5 salary certificate, have not examined the authorised representative of the company, to prove Ex.A-5. As the author of Ex.A-5 was not examined, the Tribunal, has reasonably fixed the income of the deceased at Rs.6,000/- per month, and the same may not be interfered with. He submits that as the Tribunal awarded just compensation, not adding future prospects while computing the loss of income, cannot be found fault with, and in support of this submission, learned counsel relied on the judgment of the Apex Court in *SEBASTIANI LAKRA v. NATIONAL INSURANCE CO. LTD.*[4] Therefore, he submits that the impugned award may not be interfered with and the appeal be dismissed.

22. The Tribunal, based on evidence, categorically recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and the deceased succumbed to the injuries in the said accident. The accident occurred on 13.09.2001 and the Tribunal found that the insurance policy, which was marked as Ex.B-1 with consent, was in force as on the date of the accident, as its validity period was from 15.09.2000 to 14.09.2001. The Tribunal made the insured and the insurer jointly and severally liable. Since the present appeal is by the claimants, seeking

[3] 2018 ACJ 2782
[4] 2019 ACJ 34

enhancement, the above aspects need not be gone into and the appeal is confined to quantum.

23. The case of the claimants is that the deceased was working as Regional Manager in TTK Ltd., and drawing salary of Rs.12,000/- per month. P.W.1, who is the wife of the deceased deposed about the income of the deceased and she also got examined P.W.2, who is stated to be working with the deceased. P.W.2 deposed that deceased was his colleague and was drawing Rs.12,000/- per month. The claimants filed Ex.A-5 salary certificate issued by one Kishore, Manager, H.R.D. of TTK Health care Ltd on 4.1.2005. The authorised person of the company, who issued Ex.A-5, was not examined to prove the salary of the deceased, hence the amount mentioned in the salary certificate cannot be taken into consideration. However, the fact, which remained undisputed, is that the deceased was working as Regional Manager in TTK Ltd., as on the date of the accident.

24. The Apex Court in the decision reported in *RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED*[5] has taken the monthly income of a daily wager at Rs.4,500/- per month. In the present case, as per the evidence on record, the claimants could prove that the deceased was working as Regional Manager, in TTK Ltd. In these circumstances, the amount of Rs.6,000/- per month, taken as monthly income of the deceased, warrants enhancement. Accordingly, having regard to the facts and circumstances of the case and also taking into consideration the amount fixed by the Apex Court in case of a daily wager and considering the job of the deceased, I feel that the monthly salary of the deceased can reasonably be fixed at Rs.8,000/- per month and accordingly, the said amount is taken as monthly income of the deceased.

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[5] AIR 2011 SC 2951

25. As per claim statement and the evidence on record, the deceased was aged 41 years as on the date of the accident, and working in a private firm, and this court is taking the monthly income of the deceased at Rs.8,000/-. With regard to future prospects, the Apex Court in the case of *Pranay Sethi* (1 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."

26. The deceased as on the date of the accident was aged 41 years and as per the above judgment of the Apex court, the claimants are entitled to 25 per cent of his established income towards future prospects.

27. The judgment of the Apex Court, relied on by the learned Standing Counsel for the insurance company in *Sabastiani Lakra's* case (4 supra), cannot be made applicable to the facts of the present case to deny the future prospects, for the reason that in the said judgment, the claimants therein received employee's family benefit scheme till the date of the retirement of the deceased and as the claimants were getting quite an advantage and having regard to the peculiar facts and circumstances of the case, the Apex Court, held that the claimants are not entitled to addition of 15 per cent of income towards future prospects. But in the present case, there is no material on record to show that the claimants are in receipt of any employees family benefit scheme. Therefore, the judgment of the Apex Court cannot be made applicable to the facts of the present case on all fours, and the claimant herein are entitled to future prospects, as per the judgment of the Apex Court in *Praney Sethi's* case (1 supra) at the rate of 25% of the monthly income of the deceased.

28. The monthly income of the deceased is taken as Rs.8,000/- per month and future prospects at the rate of 25%, would come to Rs.2,000/-.

Thus, the income of the deceased, including future prospects, would come to Rs.10,000/- (Rs.8,000/- + Rs.2,000/-).

29. The next issue is with regard to deduction from the above monthly income of the deceased towards his personal expenditure. The claimants in the present case, are actually six in number and during the pendency of the claim petition, the father of the deceased, who is the claimant No.6, died, and, therefore, the claimants are five in number. The Apex Court in *Sarla Verma's* case (2 supra), held that where the number of dependent family members of the deceased are 4 to 6, the deduction towards personal and living expenses, shall be $1/4^{th}$. Therefore, the deduction of $1/3^{rd}$ made by the Tribunal, towards personal expenses of the deceased, is accordingly modified.

30. If $1/4^{th}$ deduction is made from out of Rs.10,000/-, towards personal expenses of the deceased, the monthly amount that the deceased would be contributing to his family, would come to Rs.7,500/-,and Rs.90,000/- (Rs.7,500/- x 12), per annum.

31. As per material on record, the deceased was aged 41 years as on the date of the accident. As per column No.4 in the table given in Sarla Verma case (2 supra), the multiplier that has to be used to the age group of the deceased is '14'.

32. Thus, the claimants would be entitled to Rs.12,60,000/- (Rs.90,000/- x 14), towards loss of earnings of the deceased and accordingly the said amount is granted.

33. In *Pranay Sethi's* case (1 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, amount of Rs.15,000/- granted by the Tribunal to the 1st claimant towards loss of consortium, is enhanced to Rs.40,000/-. The amount of Rs.15,000/- granted by the Tribunal towards 'loss of estate', is confirmed. Further, the amount of Rs.5,000/- granted by the Tribunal for 'transport and funeral expenses' is enhanced to Rs.15,000/-.

35. As on the date of the date of the accident, the claimants 2, 3 and 4, who are the children of the deceased, are 14, 10 and 8 years respectively and due to the untimely death of their father, they lost his love and affection. The Apex Court in Magma General Ins. Co. Ltd. v. Nanu Ram (supra), held that *" 8.6. . . . 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."* In the said case, the Apex Court, granted an amount of Rs.50,000/- to each of the child, therein, for the loss of love and affection. Accordingly, the claimants 2, 3 and 4 herein, who are the children of the deceased, are granted an amount of Rs.1,50,000/-, towards 'loss of love and affection / parental consortium'. The amount of Rs.10,000/- granted by the Tribunal under this head, is accordingly enhanced.

36. Thus, in all the claimants are granted compensation as under:

(i) Loss of dependency	--	Rs.12,60,000-00
(ii) Loss of consortium to 1st claimant	--	Rs. 40,000-00
(iii) Loss of estate	--	Rs. 15,000-00
(iv) Transportation and funeral charges	--	Rs. 15,000-00
(v) Loss of love and affection / parental Consortium (to claimants 2, 3 and 4 at the rate of Rs.50,000/- each)	--	Rs. 1,50,000-00
Total:		Rs. 14,80,000-00

37. The claimants are granted compensation Rs.14,80,000/- (Rupees fourteen lakhs eighty thousand only) with interest at the rate of 7.5 per cent per annum from the date of the claim petition, till the date of payment.

38. The apportionment of the amount shall be in same proportion as ordered by the Tribunal, except as indicated above.

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

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

A.RAJASHEKER REDDY,J

DATE:04—04—2019

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