THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.2441 of 2006

JUDGMENT:

The National Insurance Company Limited, which is arrayed as 3rd respondent in MVOP.No.31/2005 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (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.16,00,000/- with interest at 7.5% per annum.

2. The appellant herein is the Insurance Company/3rd respondent, while respondent Nos.1 to 5, are the claimants and respondent Nos. 6 and 7 are the driver and owner of the lorry bearing registration No.AP - 21 - V - 7451, respectively, in the original petition before the lower Court. For the sake of convenience, the parties herein 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 01.11.2004, when the deceased was proceeding from Hyderabad to Karimnagar in his Maruti Zen Car bearing No.AP-1-E-5555, and reached the outskirts of Mallaram Village in Medak District, at about 10.30 a.m., Respondent No.1-driver of the lorry bearing No.AP 21 V 7451, drove the same in a rash and negligent manner and dashed against the car being driven by the deceased, as a result of which the deceased died on the spot due to the injuries sustained by him to his head. On the complaint of one Jakkam Oma Maheshwar, the Police, Chinnakodur registered a case in

Crime No.86/2004 under Section 304 A IPC and investigated into the matter. On account of untimely death of the deceased, the claimants became destitute. Claimant No.1 is wife, Claimant Nos.2 and 3 are children and Claimant Nos.4 and 5 are the parents of the deceased. At the time of death of the deceased he was aged 38 years, working as Assistant Motor Vehicle Inspector and earning Rs.9,482/- per month. Since the deceased had 20 years of service ahead there were good future prospects and he would have got promotions upto the level of Regional Transport Officer. As such, the claimants who are the legal heirs of the deceased claimed a sum of Rs.16,00,000/- towards compensation.

4. The 1st and 2nd respondents – driver and owner of the offending lorry remained exparte.

5. The 3rd respondent-insurer of the lorry filed counter stating that due to the contributory negligence on the part of the deceased the accident occurred. He denied the contention of the claimants that there are good promotional jumps to the cadre of the deceased and that he would have retired as Regional Transport Officer. It is also stated that the amount of compensation claimed by the claimants is highly excessive and, therefore, sought to dismiss the claim.

6. Based on the pleadings of both sides, the trial Court framed the following three issues in order to fix responsibility for the accident.

1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.AP-21-V-7451 by its driver?
2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom? And

3. To what relief?

7. During enquiry, the 1st claimant was examined as PW.1, eye-witness of the accident was examined as PW2 and Senior Accountant working in the office of the Regional Transport Officer, Karimnagar, was examined as PW3 and Exs.A-1 to A-10 were marked. The respondents did not examine any witness and no documents were marked.

8. The trial Court, by relying on the oral evidence of eye-witness-PW2 and documentary evidence i.e., certified copies of First Information Report and charge sheet, which are Exs.A-1 and A-3 respectively, came to the conclusion that due to rash and negligent driving of the driver of the lorry belonging to the insured, the accident occurred and, accordingly, tendered finding on issue No.1 in favour of the claimants.

9. On issue No.2 regarding quantum of compensation, the Tribunal awarded a sum of Rs.16,00,000/- towards compensation to the petitioners with interest @ 7.5% p.a. from the date of petition till the date of realization making the respondents 1 to 3 jointly and severally liable to pay the compensation.

10. Challenging the same the 3rd respondent-insurance company preferred the present appeal.

11. Heard both sides.

12. Learned counsel for the appellant submits that though PW2-eye witness spoke that the car driven by the deceased as well as lorry which dashed against the car, both were driven at a high speed, but the Tribunal

gave a finding that due to negligent driving of the driver of the lorry, alone, accident has occurred, which is erroneous. He also submits that the Tribunal should have held that there is contributory negligence on the part of the deceased in driving the car which met with accident. He also submits that the Tribunal has erred in adding 75% of salary to the income of the deceased for calculating the loss of earnings towards future prospects; and that only 50% of the income should have been added as per decision rendered by the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1]**.** He also submits that though the deceased was drawing Rs.9,482/- per month as salary, but the Tribunal has taken the same at Rs.12,560/- and the same is also erroneous.

13. On the other hand, learned counsel for claimants submits that the Tribunal while determining the annual income of the deceased should have deducted 1/4th of the income from the income towards personal expenses, but, the Tribunal has deducted 1/3rd amount which is erroneous. He also submits that the deceased was 39 years at the time of accident, as such, the relevant multiplier for determining the loss of earnings towards future prospects is '15' as per the Judgment rendered by the Honourable Supreme Court in **Sarla Verma's case (supra 1) (para 40),** but the Tribunal has taken '12.79' as multiplier, which is erroneous. He also submits that the Tribunal has awarded Rs.30,000/- towards non-pecuniary damages. But, as per the Judgment of Honourable Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others*** [2], the claimants are entitled to a sum of Rs.70,000/- towards consortium, loss of

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[1] (2009) 6 SCC 121

estate, funeral expenses and transportation charges. He also submits that no amount was granted by the Tribunal towards loss of love and affection to the minor children of the deceased.

14. In this case it is to be seen that though learned counsel for the appellant pleaded that there is contributory negligence, the Tribunal after assessing the evidence of PW2 came to the conclusion that the driver of the lorry was at fault in driving the vehicle in a rash and negligent manner. PW-2 clearly stated that the Lorry was driven at high speed and accident occurred on account of negligence of respondent No.1. He denied the suggestion that deceased was negligent.

15. The second contention raised by the appellant is that only 50% of the income of the deceased should have been added to the income of the deceased while calculating the loss of earnings towards future prospects. The Honourable Supreme Court in **Sarla Verma's case (supra 1),** held that 50% of actual salary has to be added to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. In view of the same, only 50% of income of the deceased has to be added to the actual income of the deceased while calculating the future prospects.

16. As far as the income of the deceased who is working as Assistant Motor Vehicle Inspector is concerned, the Tribunal has taken Ex.A7-salary certificate of the deceased into account which shows that the deceased is getting a salary of Rs.9,482/-. But, since the Government had

[2] (2017 ACJ 2700 = AIR 2017 SC 5157)

issued G.O.Ms.No.231, Finance (P.C.I.) Department dated 27.08.2005 revising the pay scales of the State Government employees which is effected from 01.07.2003 and since the deceased died on 01.11.2004, and by relying on the evidence of PW3 who stated that according to revised pay scales, the total emoluments of the deceased was fixed at Rs.12,560/- and also by relying on Ex.A10-certificate issued by the Deputy Transport Commissioner, the Tribunal has rightly taken the gross income of the deceased as on the date of his death at Rs.12,560/- per month. As such the same cannot be disturbed.

17. As far as the objection raised by the claimants with regard to deduction of personal expenses is concerned, as per the Judgment rendered by the Apex Court in **Sarla Verma's case (supra 1) (para 30),** the deduction towards personal expenses of the deceased should be $1/4^{th}$ where the number of dependent family members is 4 to 6. But, the Tribunal has deducted $1/3^{rd}$ from the income of the deceased towards personal expenses. As such, the same has to be rectified since the dependents of the deceased in the present case are 5 in number.

18. As per the Judgment rendered by the Apex Court in ***Pranay Sethi case (supra)*** the claimant No.1 is entitled to Rs.40,000/- towards loss of consortium, and all claimants are entitled to Rs.30,000/- towards loss of estate, funeral expenses and transportation charges. An amount of Rs.1 lakh can be granted to the minor children of the deceased towards love and affection/parental consortium.

19. With regard to prayer for grant of filial consortium, the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram & others (***Civil Appeal No.9581 of 2018 (arising out of SLP (Civil) No.3192 of 2018) held as under;

> "The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium."

20. Form the above judgment it is clear that the parents are entitled for filial consortium, who lost their minor child or unmarried son or daughter. In the present case the deceased is married. Hence the prayer for filial consortium is rejected.

21. In view of the aforesaid facts and circumstances after considering the rival submissions made by both the parties, this Court is of the view that the claimants are entitled to the following compensation.

Income of the deceased per month	Rs.12,560
Less: 1/4th towards personal expenses	Rs. 3,140
	Rs. 9,420
Add: 50% towards future prospects	Rs. 4,710
	Rs.14,130
Annual income of the deceased	x 12
	Rs.1,69,560
Multiplied with Relevant multiplier	x 15
Loss of earnings towards future prospects	Rs.25,43,400

Add: amount towards loss of consortium, Loss of estate, funeral expenses and Transportation charges	Rs. 70,000
Add: amount towards loss of love and affection/ parental consortium (awarded to minor children i.e. R2 and R3)	Rs. 1,00,000
	Rs.27,13,400

20. Thus in total the claimants are entitled to a sum of Rs.27,13,400/- towards compensation. However, the Tribunal has granted only Rs.16,00,000/-. Thus, it is clear that the Tribunal has not granted any amount excessively. Therefore, this Court did not find any merit in this appeal to accept the case of the insurer.

21. For the aforesaid reasons, the Civil Miscellaneous 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

3rd April, 2019
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