

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.3775 OF 2005

JUDGMENT

This appeal is filed by the claimants against the order and decree dated 09-09-2005 passed by the Motor Accidents Claims Tribunal – cum – III Additional District Judge, Rangareddy District, NTR Nagar, in O.P.No.1073 of 2001, seeking enhancement of compensation.

2. The claimants are the parents of the deceased. The Tribunal based on the evidence, both oral and documentary, categorically recorded finding of fact that on account of rash and negligent driving of the driver of the milk tanker bearing No. AEN 5183, he dashed the moped bearing No. ABH 9013 from back side, on which the deceased was traveling, and that the deceased died in the said accident.

3. The case of the claimants is that the deceased was unmarried and aged 22 years at the time of accident and was a graduate in B.A. She was working as faculty in ACME Computers, Dilsukhnagar and was getting a monthly salary of Rs.5,000/- and they filed claim petition under Section 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/-.

4. As the claimants did not examine any person to prove the salary certificate which was marked as Ex.A-6, the Tribunal taking the income of the deceased at Rs.60/- per day and Rs.1,800/- per month and deducting 1/3rd towards personal expenditure of the deceased and applying the multiplier '11' based on the average age of the parents of the deceased as per second schedule under Section 163-A of the Act; arrived at the loss of earnings of the deceased at Rs.1,58,400/-. The Tribunal further awarded

an amount of Rs.2,000/- towards funeral expenses, Rs.4,600/- towards mental agony and Rs.5,000/- towards loss of estate and thus in all awarded an amount of Rs.1,70,000/- with interest at the rate of 9 per annum from the date of the petition till the date of realization.

5. As already noted above, the Tribunal recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the crime lorry. There is also no dispute that the policy was in force as on the date of the accident and the Tribunal held that the 2nd respondent – insure has to indemnify the liability of the 1st respondent – insured and both are jointly and severally liable to pay the compensation. The present appeal by claimants is for enhancement of compensation.

6. Learned counsel appearing for the claimants contended that the compensation granted by the Tribunal is meagre and it has not taken into consideration the facts and circumstances on record. He reiterating the averments made in the claim petition, submits that the deceased was a graduate in B.A. and was working as faculty in a computer centre and produced salary certificate issued by the firm to show that she was getting a monthly salary of Rs.5,000/-, but the Tribunal not believing the same, has taken the monthly income at Rs.1,800/-, which is very meagre. He further submits that the deceased was aged 22 years as on the date of the accident, and she was unmarried, therefore, for applying appropriate multiplier, her age has to be taken into consideration and not the age of the parents of the deceased. He submits that as per the judgment of the Apex Court in *SARLA VERMA v. DELHI TRANSPORT CORPORATION*¹, the appropriate multiplier for the age group of the deceased is '18', but the Tribunal, taking the average age of the parents of the deceased, used

¹ (2009)6 SCC 121

the multiplier of '11', therefore, the same requires to be modified. He further submits that as per the judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LTD. v. PRANAY SETHI*², the claimants are entitled for future prospects of the salary of the deceased at 40 per cent and they are entitled for conventional charges of Rs.15,000/- each under the heads of 'loss of estate' and 'funeral expenses'. He submits that the Tribunal has not granted any amount under the head of 'future prospects' and the amount granted for loss of estate and funeral charges at the rate of Rs.5,000/- and Rs.2,000/- respectively are very meagre. Therefore, he sought to enhance the compensation.

7. Heard Sri N.Rajeshwar Rao, learned Standing Counsel for 1st respondent.

8. Sri Meherchand Noori, learned Standing Counsel for the 2nd respondent – Insurance Company, contended that as the claimants failed to examine the author of Ex.A-6 salary certificate stated to have been issued by ACME Computers, where the deceased is stated to be working, the Tribunal has reasonable fixed the income of the deceased. He submits that as the deceased was unmarried, as per the judgment of the Apex court in *Sarla Verma (supra)*, the deduction towards personal expenses from out of the income of the deceased, shall be fifty percent, but the Tribunal deducted only 1/3rd. Therefore, he sought to dismiss the appeal.

9. From the material on record, it could be seen that the deceased was unmarried and was aged 22 years at the time of accident and as per Ex.A-7 degree certificate, she is a graduate in B.A. The case of the claimants is that she is working as faculty in ACME computer centre and

² AIR 2017 SC 5157

earning an amount of Rs.5,000/- per month and in support of their claim, they sought to rely on Ex.A-6, salary certificate. The Apex Court in the decision reported in *RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED*³ has taken the monthly income of a daily wager at Rs.4,500/-. Therefore, in the considered opinion of this court, the monthly salary of the deceased, claimed at Rs.5,000/-, cannot be said to be excessive or exorbitant. Therefore, the monthly salary of the deceased taken by the Tribunal at Rs.1,800/- is modified and accordingly, the income of the deceased is fixed at Rs.5,000/- per month.

10. With regard to future prospects, the Apex Court in the case of *Pranay Sethi (supra)*, held asunder:

“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.”

11. As per the above judgment of the Apex court, as the deceased was aged 22 years, as on the date of the accident, the claimants are entitled to 40 per cent of her established income towards future prospects.

12. The income of the deceased is taken as Rs.5,000/- per month and 40% of the said amount, would come to Rs.2,000/-. Thus, the monthly income of the deceased is taken as Rs.7,000/- (Rs.5,000/- + Rs.2,000/-).

³ AIR 2011 SC 2951

13. Coming to deduction towards personal expenses, the Apex Court in *Sarla Verma's case* (supra), held that the deductions towards personal and living expenses from out of the income arrived at, in case of bachelor, shall be 50%.

14. The deceased, in the present case, is unmarried, therefore, the deductions towards personal and living expenses, shall at the rate of 50%. The monthly income of the deceased is taken as Rs.7,000/- and if 50% of the said amount is deducted towards personal expenses of the deceased, the amount that the deceased would be contributing to her family will come to Rs.3,500/- per month and Rs.42,000/- per annum.

15. The next issue is with regard to use of appropriate multiplier. The deceased is unmarried, the Apex Court in *MUNNA LAL JAIN v. VIPIN KUMAR SHARMA*⁴ held as under:

“11. The remaining question is only on multiplier. The High Court following *Santosh Devi* {(2012)6 SCC 421}, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for some; but that has been given a quietus by another three-Judge Bench decision in *Reshma Kumari* {(2013)9 SCC 65}. *It was held that the multiplier is to be used with reference to the age of the deceased.* One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average etc., is to be taken. To quote: (*Reshma Kumari case*, SCC P. 88, para 36)

“36. In *Sarla Verma* {(2009)6 SCC 121}, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purpose of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) *the multiplier to be applied with reference to the age of the*

⁴ (2015)6 SCC 347

deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*.

(Emphasis added)

16. From the above decision it is clear that multiplier has to be applied with reference to the age of the deceased and not by taking the age of the parents.

17. The deceased is aged 22 years and as per the judgment of the Apex Court in *Sarla Verma* (supra), the appropriate multiplier that has to be used in the present case is '18'. Thus, the claimants are entitled to Rs.7,56,000/- (Rs.42,000/- x 18).

18. Further, as per the judgment of the Apex court in *Pranay Sethi* case (supra), the claimants are granted an amount of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral charges. Thus, the amounts granted by the Tribunal under these heads, are accordingly enhanced. The Tribunal granted an amount of Rs.4,600/- towards mental agony and the same is confirmed.

19. Thus, in all the claimants are entitled to Rs.7,90,600/- (Rs.7,56,000/- + Rs.15,000/- + Rs.15,000/- + Rs.4,600/-)

20. In the present case, the claimants in the claim petition, claimed an amount of Rs.5,00,000/-, but this court, based on the evidence and the precedents, found that the claimants are entitled to Rs.7,90,600/- i.e., exceeding their claim. The Apex Court in *NAGAPPA vs. GURU DAYAL SINGH*⁵ 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

⁵ (2003)2 SCC 274

principle of law has been reiterated in several subsequent judgments of the Apex Court in *SRI LAXMAN @ LAXMAN vs. DIVISIONAL MANAGER, ORIL INS CO. LTD*⁶ and *RAJESH v. RAJBIR SINGH*⁷. In view of the judgments of the Apex Court, this court is inclined to grant the just compensation arrived at, though the same exceeds the claim of the appellants.

21. For the foregoing reasons, the compensation awarded by the Tribunal at Rs.1,70,000/- is enhanced to Rs.7,90,600/- (Rupees seven lakhs ninety thousand, six hundred only) with interest at the rate of 7.5 per cent per annum from the date of the petition till the date of date of deposit or realization, whichever is earlier. The apportionment of the compensation among the claimants shall be as directed by the Tribunal.

22. The Tribunal shall deduct the deficit court fee on deposit of enhanced compensation.

23. The appeal is accordingly allowed.

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

A.RAJASHEKER REDDY,J

DATE:20—02—2019

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⁶ (2011)0 Supreme (SC) 1054

⁷ (2013)9 SCC 54