

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**MACMA.No.3502 of 2005**

**JUDGMENT:**

Having dissatisfied, with the award of Rs.6,18,300/- as compensation for the death of deceased by name Voodem Kishtaiah @ V.Kishtaiah Reddy in a road accident, by the award and decree 24-09-2004 in OP.No.1326 of 2002 on the file of the IV Additional Chief Judge-cum-Motor Accident Claims Tribunal, Hyderabad. (for short, 'the Tribunal'), as against the claim of Rs.10,00,000- the appellants who are the wife and children respectively, preferred the instant appeal under Section 173 of the Motor Vehicles Act, seeking enhancement of compensation.

The appellants herein, who are the wife and children of deceased, respectively, were petitioners, while respondents 1 and 2 herein were respondents 1 and 2 respectively, in the original petition.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

The factual background of the case in brief is that one Voodem Kishtaiah @ V.Kishtaiah Reddy visited his

native village i.e. Rampally, to attend the marriage of his relatives and after the marriage he along with his friend went to his relatives house at Cheriyaal on 17-03-2002 and in the evening around 6.00 PM while he was returning to Rampally from Cheriyaal along with one Udem Kanaka Reddy, who is also a Military jawan on Scooter bearing No.AP 28D 5608 and when they reached Guntur Gudisalu turning situated in the outskirts of Venkatta Village, a lorry bearing No.AHJ 9767 was proceeding towards Cheriyaal driven by its driver in a rash and negligent manner, dashed their scooter. Due to which both of them fell down and lorry ran over the head of deceased and resulted in head injury and crushing of brain with other fractures and his death instantly. The pillion rider Udem Kanaka Reddy sustained grievous injuries and both of them were shifted to Government Hospital, Siddipet. A case in Cr.No.29 of 2002 was registered by Kukunoorpally Police Station for the offences punishable under Sections 304-A and 337 IPC against the lorry driver. The petitioners claim that deceased was 30 years old at the time of death and he was working in defence as Mechanic of Motor Vehicles as CFN and EME centre (Technician) and drawing

Rs.7,000/- per month. Therefore, they sought for compensation of Rs.10.00 lakhs towards compensation.

Both the respondents contested the claim. The 1<sup>st</sup> respondent denied the rash and negligent driving attributed to the lorry driver and also contended that there was rash and negligent manner on the part of deceased only, which resulted in accident and his death. It is also denied by the 1<sup>st</sup> respondent that deceased was working as Mechanic in Defence. It is also admitted that the 1<sup>st</sup> respondent was the owner of subject lorry. The 2<sup>nd</sup> respondent is insured and therefore, bound to indemnify and the driver of lorry is a necessary party and he is deliberately not impleaded him and therefore prayed to dismiss the claim of the petitioners.

The 2<sup>nd</sup> respondent also denied about the manner of accident, age and income of deceased at that point of time. It is also contended that since deceased was not having any experience to drive the Scooter and not having valid driving licence to drive the same, the accident occurred. Therefore, the 2<sup>nd</sup> respondent is not liable to pay compensation. Since the driver of the lorry was not having licence, the 2<sup>nd</sup> respondent is not liable to indemnify the 1<sup>st</sup> respondent. However, contends that

claim for Rs.10.00 lakhs is highly excessive and sought to dismiss the claim.

On the basis of above pleadings, the following issues are settled for trial:

1. Whether the deceased V.Kistaiah died in a motor accident that took place on 17-03-2002 due to the rash and negligent driving of lorry No.AHJ-9767?
2. Whether the petitioners are entitled for compensation, if so, from who and to what amount?
3. To what relief?

After considering the evidence of PWs 1 to 4 examined on behalf of the petitioners and Ex.A-1 to A-8 and Ex.B1 copy of policy marked, granted an amount of Rs.6,18,300/- out of claim of Rs.10.00 lakhs. Against the same, the present appeal is filed.

Heard both sides.

The Tribunal, while deciding the monthly income of deceased has taken gross salary of Rs.5675/- as per the evidence of PW.4 and a sum of Rs.1,250/- therein was deducted towards deductions from his salary, which comes to Rs.4,425/-. After deducting 1/3<sup>rd</sup> towards personal expenses, the income of deceased was arrived at Rs.2,950/- per month and Rs.35,400/- per annum. After

applying multiplier '17' to Rs.35,400/- loss of dependency was calculated at Rs.6,01,800/-. Further the Tribunal has granted Rs.10,000/-, Rs.2,000/- and Rs.2500/- towards loss of consortium, funeral expenses and loss of estate respectively and in all awarded an amount of Rs.6,18,300/-towards compensation.

In this case it is to be seen that the Tribunal has excluded deductions of Rs.1250/- while arriving at monthly income of deceased. The deductions are nothing but savings of deceased which will be useful to the welfare of family of deceased. As such, deducting of an amount of 1,250/- by the Tribunal from the salary of deceased is erroneous. In fact, the salary of deceased has to be taken at Rs.5675/- per month. As per the judgment of Supreme Court in **Sarla Verma v. Delhi Transport Corporation**<sup>1</sup>, since the claimants are five in number, 1/4<sup>th</sup> of the income of deceased is to be deducted towards personal expenses instead of 1/3<sup>rd</sup> deduction as done by the Tribunal. Then the contribution of deceased to his family comes to Rs.4256/-. As per the judgment of **Sarla Verma**, the relevant multiplier is "16" as the age of deceased is 31 ½ years. Therefore, by taking the earnings of the deceased at Rs.4256/- per

---

<sup>1</sup> (2009) 6 Supreme Court Cases 121

month and Rs.51,072/- per annum, if the relevant multiplier “16” is adopted (Rs.51,072/- x 16), loss of dependency comes to Rs.8,17,152/-, rounded off to Rs.8,17,150/-. Further, since deceased is a fixed wage earner, the appellants are entitled for future prospects at 50%, which comes to Rs.4,08,575/-and the same is also granted to the appellants.

That apart, as per the ratio laid down by Supreme Court in **National Insurance Company Limited v. Pranay Sethi**<sup>2</sup> the appellants are entitled for an amount of Rs.70,000/- under conventional heads i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, as against the amounts granted by the Tribunal in all Rs.17,500/-. Thus in all, the appellants are entitled for Rs.12,95,725/-.

Though the compensation claimed by the appellants before the Tribunal was only for Rs.10.00 lakhs, in view of the judgment of Supreme Court in **Nagappa v. Gurudayal Singh**<sup>3</sup>, in Motor Vehicles Act there is no restriction that the compensation should be awarded only upto the claim made by the appellants.

---

<sup>2</sup> 2017 Law Suit (SC) 1093

<sup>3</sup> (2003) 2 SCC 274

Hence, the compensation awarded by the Tribunal is enhanced to Rs.12,95,725/-.

Accordingly, the appeal is allowed enhancing the compensation from Rs.6,18,300/- to Rs.12,95,725/- payable by the respondents jointly and severally. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Supreme Court in **Rajesh v. Rajbir**<sup>4</sup>, the same rate of interest is awarded on the enhanced amount from the date of claim petition till realisation.

The enhanced compensation shall be apportioned among the petitioners in the same proportion in which the original compensation was directed to be apportioned and disbursed by the Tribunal.

The Tribunal shall deduct the difference of Court fee on the excess amount of Rs.2,95,725/-.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

**A.RAJASHEKER REDDY,J**

11-02-2019

Nvl

---

<sup>4</sup> 2013ACJ 1403=2013(4) ALT 35

