THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

MACMA.No.2050 OF 2017

DATED:24-04-2019

Between :
United India Insurance Co.Ltd.,
Rep.by its Senior Divisional Manager, TP
Cell, D.No.4PB144, 2nd Floor, Posnett Bhavan,
Church Building, Tilak Road, Hyderabad-500 001.

.. Appellant

And

Ahemd Bee @ Ahmeda Begum
W/o.Shaik Babu @ S.K.Babu @ Babumiya
Aged about 60 years, occ: House wife and others.

.. Respondents

This court made the following :

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JUDGMENT:

Heard learned counsel for the appellant and learned counsel for the respondents/petitioners.

02. The facts to the extent relevant for consideration are, on 18-05-2014 Syed Akram along with his brother Syed Feroz while proceeding from Sulthanpur Village to Sanga Reddy and when they reached Thaddanpally Chourasta at about 2 pm, one Tata Ace vehicle coming from their opposite direction dashed against their two wheeler, which resulted in bleeding injuries and their instant death. Alleging that said accident occurred due to rash and negligent driving by the driver of Tata Ace and on account of sudden demise of Syed Feroz, respondents have lost bread winner in addition to loss of family member and his love and affection, they filed MVOP.No.1943 of 2014 before the Motor Accident Claims Tribunal-cum-XIV Additional Chief Judge's Court, (F.T.C.), Hyderabad (for short "the Tribunal") claiming compensation of Rs.10.00 lakhs. Petitioner No.1 is mother and petitioners 2 to 4 are sisters. Learned Tribunal held that accident occurred due to rash and negligent driving by the driver of Tata Ace and held that respondents/petitioners are entitled to compensation. His family members claimed that deceased was successfully running Fast Food Center. Therefore, on account of his sudden demise, they lost amounts contributed by deceased to the family. Treating that his family was wholly dependant on the contribution of deceased along with assertion that income of deceased was Rs.5,000/- per month, added 50% of said income as future loss of earnings and

holding that family consists of widowed mother and three sisters, contribution to the family of deceased was treated as 75% and by adding statutory benefits, Tribunal arrived at compensation payable as Rs.10,85,000/- with interest @ 7.5% per annum.

03. The Insurance Company assails the order of the Tribunal on the quantum of compensation determined.

04. According to learned Standing Counsel as held by Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi[1],** the future loss of earnings should be 40% when the deceased is less than 40 years age and as deceased was less than 40 years and was self-employed, his loss of future earnings should be treated at 40%, which comes to Rs.7,000/- whereas erroneously Tribunal took the same as 50% and the same is not valid in law. He would further submit that Tribunal also erred in treating the sisters of deceased as dependants of deceased. According to learned Standing Counsel, even by the time MVOP was instituted, the sisters of deceased were aged 26 years and above. That petitioners did not lead any evidence to show that they were not married, not earning any income and were wholly dependant on the income of deceased. He would submit that since the evidence was not let in to this extent, Tribunal has erred in holding that they were wholly dependant on deceased. Ordinarily, only widowed mother is entitled to compensation and contribution of deceased to the family would be 50%, but not 75%.

05. Learned counsel for the respondents/petitioners submits that having regard to the fact that family consist of widowed

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[1] 2017 Law Suit (SC) 1093

mother and three sisters, Tribunal has rightly determined the contribution to the family as 75% from the earnings of deceased. He would also support the decision of the Tribunal in fixing the future loss of income at 50%. According to learned counsel, it was asserted by the petitioners before the Tribunal that though they were depending on income of deceased and said submission is not controverted by Insurance Company by leading evidence and in the absence of any other evidence, the statement of the respondents/petitioners that they were dependant on deceased earnings has to be taken on its face value and therefore, Tribunal has rightly arrived at total amount of compensation payable.

06. Before appreciating the respective contentions, it is to be seen that difference between the amount awarded by the Tribunal and the amount claimed as entitled by the appellant-Insurance Company is Rs.3,83,000/-.

07. With reference to issue of future loss of income, the issue is no more res-integra in view of the Constitutional Bench Judgment in **Pranay Sethi** cited supra. On review of precedent decisions on various aspects of payment of compensation in case of motor accidents, the Supreme Court recorded its conclusions. Insofar as this case is concerned, paragraph No.59 is relevant, which reads as under:

> " Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The

determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality.

And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

08. In terms of above conclusions recorded by the Hon'ble Supreme Court, when self-employed died as Bachelor, loss of future earnings should be fixed at 40%, if he is aged below 40 years. Thus Tribunal erred in determining the loss of future earnings at 50%. The same is liable to be set aside. Accordingly, set aside.

09. With reference to the contribution to the family by the deceased, the issue was considered by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation[2].** Against question No.(ii), the Supreme Court held that dependant mother is entitled to compensation. In the case of unmarried deceased person, his contribution to the family should be treated as 50% and therefore, while determining the compensation payable, 50% of the income earned by deceased should be treated for arriving at appropriate compensation. An exception is carved out to standardize the mechanism, incase family is large and the family members are wholly dependant on the deceased, as can be seen from paragraph Nos 31 and 32 of judgment, the discretion is

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[2] (2009) 6 Supreme Court Cases 121

vested in the Tribunal to assess the contribution of the deceased to the family as more than 50% of earnings and can go up to 75%. For this purpose, the burden is on the claimants to show that they were wholly dependant on the income earned by deceased. In case of female dependants, they should show they were unmarried, continued to live in the same family, not employed and were dependant on the deceased for their sustenance. Except asserting that they were dependants on the deceased, no evidence was lead to show that they were not married and they were not gainfully employed and wholly depending on the deceased. In paragraph No.11 of counter affidavit filed by the appellant, it has categorically denied the claim of petitioners 2 to 4 as dependants. When the Insurance Company denied the entitlement of petitioners 2 to 4 for additional compensation claiming themselves as dependants, burden is heavily on the respondents/petitioners to show that they were dependant. Thus, merely because family members claim as dependant is not sufficient for the Tribunal to assess the amount of contribution as more than 50% and to treat the same as basis to determine total amount of compensation payable to the respondents/petitioners. In the absence of any cogent material before the Tribunal to show that petitioners 2 to 4 were depending on the earnings of the deceased, Tribunal erred in deviating from the standard principle and increasing the component of contribution of earnings of deceased at 75%. Thus decision of the Tribunal to that extent is also set aside. The component of contribution of deceased to the family should be treated as 50%.

10. Having regard to the above, the respondents/petitioners are entitled to compensation of Rs.6,72,000/- by adding Rs.30,000/-.

As held by the Supreme Court in **Pranay Sethi,** mother is entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of love and affection, whereas, the Tribunal granted Rs.30,000/- towards funeral expenses and Rs.1,00,000/- towards loss of love and affection. To that extent also award of the Tribunal is set aside.

11. The amount of compensation payable is Rs.6,72,000/- (Rs.5,000/-+40%=Rs.2,000/-=Rs.7,000/- and 50% of the same Rs.3500/-x12=Rs.6,42,000/- multiplied by '16' multiplier works out to Rs.6,72,000/-). In addition, the 1st respondent/1st petitioner is entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of love and affection. Thus the 1st respondent/1st petitioner is entitled to Rs.7,02,000/- with interest @ 7.5% per annum from the date of petition till realization. Accordingly, the award of the Tribunal is modified and the appeal is allowed.

12. The appellant shall pay balance amount payable to the 1st respondent/1st petitioner within eight weeks from the date of receipt of a copy of this order. Pending miscellaneous applications shall stand closed.

P.NAVEEN RAO,J

24-04-2019
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