THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.1771 OF 2005

JUDGMENT

This appeal is filed by the claimants against the judgment and decree dated 10-09-2004 passed by the Motor Accidents Claims Tribunal (District Judge), at Nizamabad in O.P.No.1840 of 2002, seeking enhancement of compensation.

The claimants are the sons of the deceased – Jungala Chinna Gangaram. Their case is that on 31-12-1999 while the deceased was traveling in the auto bearing engine No.D-07033236, chases No. T-05033201-M99 from Komati Kondapur to Yergatla (V), on the way, when the auto reached in the limits of Varshakonda (V) at about 3.30 p.m., the driver of the auto drove the vehicle in a rash and negligent manner and at a high speed, and lost control over the auto, due to which the auto went off the road and turned turtle. As a result of which, the deceased sustained grievous head injuries, bleed injuries on private parts and died on the way to the hospital at Metpally.

The case of the claimants is that prior to the accident, the deceased was hale and healthy and was aged 48 years and earning an amount of Rs.8,000/- to Rs.10,000/- per month, by doing agriculture and was contributing his earnings to the claimants for their maintenance and on account of his death, the claimants are subjected to mental agony, loss of future hope and affection of their father.

With the above averments, the claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/-.

The owner of the crime vehicle, who is the insured, remained *ex parte* and the 2nd respondent – insurer, filed counter affidavit and denied the manner of accident, as pleaded by the claimants, age and avocation of the deceased and further denying the liability and contending that the compensation claimed is excessive, sought for dismissal of the claim petition.

The Tribunal, considering the evidence of P.W.2, who was the eye witness to the accident and also contents of Exs.A-1 and A-2, which are copies of FIR and charge sheet, categorically recorded finding of fact that the accident occurred due to rash and negligent driving of the 1st respondent, who is the driver-cum-owner of the crime auto.

The Tribunal, based on the evidence of R.W.1, who is working as Assistant Administrative Officer in the 2nd respondent – insurance company, held that the driver was having valid learner's licence and that the policy under Ex.B-1 was in force as on the date of the accident and that the 2nd respondent – insurance company is liable to pay the compensation as per the terms and conditions of the policy.

The Tribunal taking the income of the deceased as Rs.3,000/- per month and after deducting 1/3rd towards his personal expenses, arrived at the monthly income of the deceased at Rs.2,000/- per month and applying the multiplier of 8, granted an amount of Rs.1,92,000/- towards loss of dependency. The Tribunal further awarded an amount of Rs.5,000/- towards loss of estate and Rs.2,000/- funeral expenses and thus, in all, granted an amount of Rs.1,99,000/- with interest at the rate of 9 per cent per annum from the date of the petition till realization.

Not being satisfied with the compensation granted by the Tribunal, the claimants filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellants submits that though the claimant was aged 48 years, the Tribunal has taken the age as 58 years. He submits that the Apex Court in the decision reported in *RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED*[1] has taken the monthly income of a daily wager as Rs.4,500/- and the decreased in the present case was an agriculturist, cultivating Acs.7-00 of land, therefore, his monthly can be taken at Rs.10,000/- per month and the Sarpanch, who was examined as P.W.3, also testified to this effect, but the Tribunal disbelieved the evidence on record, has taken only an amount of Rs.3,000/-, which is very meagre and the income of the deceased may be enhanced. He submits that the deceased was aged 48 years, but the Tribunal has taken the age as 58 years, and even if the said age of the deceased is taken, as per the judgment of the Apex Court in *SARLA VERMA vs. DELHI TRANSPORT CORPORATION*[2], appropriate multiplier that has to be used is '9', but the Tribunal has applied the multiplier of '8'. He further submits that as per the judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI*[3], the claimants are entitled to future prospects on the salary of the deceased at 10 per cent, and they are entitled to Rs.30,000/- under the heads of 'loss of estate' and 'funeral charges', but no amount was awarded under the said heads. With these submissions, he sought for enhancing the compensation.

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[1] AIR 2011 SC 2951
[2] (2009)6 SCC 121
[3] 2017(6) ALD 170 (SC)

On the other hand, Smt. B.L.Prasuna, learned Standing Counsel appearing for the 2nd respondent – insurance company, submits that the claimants have not produced any evidence with regard to income of the deceased, therefore, the Tribunal, considering that the deceased who was aged 58 years, could earn Rs.100/- per day, has taken the monthly income of the deceased at Rs.3,000/- and applying the multiplier of '8' granted amount under the loss of dependency and awarded amounts under the loss of estate and funeral charges. She submits that the Tribunal has awarded just compensation and hence the appeal may be dismissed.

In the present case, there is no dispute that the accident occurred due to rash and negligent driving of the driver of the auto and the deceased died in the said accident and breach of policy conditions are not found and the policy was in force as on the date of the accident. The only dispute in this appeal is with regard to quantum.

The claim of the claimants is that the deceased was doing agriculture and earning an amount of Rs.8,000/- to Rs.10,000/- per month. In support of their claim, they also got examined the Sarpanch of the village as P.W.3. Except the oral evidence, they could not produce any tangible evidence to show that the deceased was earning the amount as claimed by them. However, the Apex Court in the decision reported in Ramchandrappa's case (1 supra), has taken the monthly income of a daily wager at Rs.4,500/-. In the present case, the deceased is an agriculturist. Therefore, taking the monthly income of the deceased at Rs.4,500/- per month, would suffice the ends of justice.

Though it is stated that the deceased was aged 48 years, claimants have not produced any evidence. In Ex.A-4, the age of the deceased is mentioned as 58 years. Therefore, the Tribunal has taken the said age, and hence no exception can be taken.

With regard to future prospects, the Apex Court in the case of Pranay Sethi (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."

As per the above judgment of the Apex Court, for the age group of the deceased, who was 58 years, 10 % of the his income has to be added towards future prospects. The income of the deceased is taken an Rs.4,500/- per month, and 10% of the said amount would come to Rs.450/-. Thus, the monthly income of the deceased would come to Rs.4,950/- and if 1/3rd of this amount is deducted towards personal and living expenses, the income, which the deceased would be contributing to his family, will come to Rs.3,300/- per month and Rs.39,600/- (Rs.3,300/- x 12 = Rs.39,600/-) per annum.

In view of the judgment of the Apex Court in Sarla Verma's case (supra), the appropriate multiplier that has to be used for the age of deceased, who is 58, is '9'. In view of the same, the multiplier taken by the Tribunal is accordingly modified.

Thus, the loss of dependency would come to Rs.3,56,400/- (Rs.39,600/- x 9) and the same is accordingly awarded.

In Pranay Sethi's case (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."

In the present case, the wife of the deceased, pre-deceased him and hence, no amount under the loss of consortium can be awarded. As per the above judgment of the Apex Court, the claimants are awarded an amount of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the amount granted by the Tribunal under these heads, is accordingly enhanced.

For the foregoing reasons, the compensation granted by the Tribunal is enhanced to Rs.3,86,400/- (Rs.3,56,400/- + Rs.15,000/- + Rs.15,000/-), with interest at the rate of 7.5 per cent per annum from the date of the petition till the date of realization.

The apportionment of the compensation among the claimants and its withdrawal, shall be as ordered by the Tribunal below.

The appeal is accordingly allowed to the extent indicated above.

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

A.RAJASHEKER REDDY,J

DATE:22—02—2019

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