

***THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

+ M.A.C.M.A.No.749 OF 2015

% 23—04—2019

The Reliance General Insurance
Co. Ltd., rep. by its Manager

...Appellant

vs.

\$ Pachimatla Kavitha and Others

... Respondents

!Counsel for the Appellant : A.Ramakrishna Reddy

^Counsel for Respondent Nos.1 to 3: Ponnam Ahsok Goud

<Gist :

>Head Note :

? Cases referred

1. 7(6) ALD 170 (SC)
2. 8 LawSuit (SC) 904
3. 8 LawSuit (SC) 1192

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**M.A.C.M.A. NO.749 OF 2015****JUDGMENT:**

This appeal is preferred by the appellant-insurance company questioning the order of the Motor Vehicle Accident Claims Tribunal-cum- I Additional District Judge at Karimnagar (for short, the Tribunal) in M.V.O.P.No.623 of 2010 dated 04.09.2014.

2. The brief facts of the case are that respondent Nos.1 to 3 herein are wife, son and mother of the deceased-Pachimatla Chandu, respectively. On 14.11.2009 at about 11.00 pm., the deceased went to Potharam Village on his Bajaj Chetak vehicle bearing No.AP15F 2756 to drop his friend at Potharam. After dropping his friend at Potharam Village, while returning to Husnabad on his vehicle, on the way on the outskirts of Husnabad near a culvert, respondent No.4 herein, came on a tractor and trailer bearing No.AP15AH 3020/3021, in a rash and negligent manner with high speed, and dashed the scooter of the deceased, as a result of which, the deceased fell down from the scooter and died on the spot. Respondent Nos.1 to 3 herein filed the claim petition seeking compensation of Rs.8,00,000/- against the driver of the tractor (respondent No.4 herein), owner of the tractor (respondent No.5 herein), and insurer of the tractor (appellant herein).

3. In the claim petition, the appellant-insurance company filed a counter denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not liable

to pay any compensation and therefore prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor and awarded compensation of Rs.8,96,064/- towards loss of income, Rs.1,00,000/- towards loss of consortium to the wife, Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses and transportation charges, totaling to Rs.11,21,064/-, with interest at the rate of 7.5% per annum. Aggrieved by the said order, the appellant/insurance company filed the present appeal.

5. Sri A.Ramakrishna Reddy, the learned counsel for the appellant, has raised the following pleas:

Firstly, though P.Ws.1 to 4 did not witness the incident, basing upon their testimony, the Tribunal came to the conclusion that the accident was occurred due to negligence of the driver of the Tractor, which is without any basis.

Secondly, the insured vehicle i.e., tractor and trailer bearing No.AP15AH 3020/3021 was implicated in the offence and it is a clear case of hit and run by unknown vehicle.

Thirdly, though there is no evidence with regard to the earnings of the deceased, the Tribunal taken the income of the deceased at Rs.7,000/- per month, instead of notional income at Rs.3,000/- per month.

Fourthly, the Tribunal awarded Rs.2,25,000/- towards conventional heads (Rs.1,00,000/- towards consortium to the wife, Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses and transportation charges), contrary to the judgment of the Apex Court in **National Insurance Co. Ltd. Vs. Pranay Sethi¹**, wherein the conventional heads were fixed at Rs.70,000/-.

Fifthly, though the claimants claimed an amount of Rs.8,00,000/-, the Tribunal wrongly awarded excessive amount of Rs.11,21,064/-.

6. On the other hand, Sri Ponnamm Ashok Goud, the learned counsel for respondent Nos.1 to 3, argued that the order passed by the Tribunal is just and proper. He further argued that in **Pranay Sethi's** case, the Apex Court dealt with conventional heads i.e., loss of estate, loss of consortium and funeral expenses. Therefore, the amount of Rs.1,00,000/- granted by the Tribunal towards loss of love and affection does not cover under the said heads, as 'loss of estate' and 'loss of love and affection' are different. Therefore, the said amount shall not be disturbed. He relied on **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others²** and **Ramla & Others Vs. National Insurance Company Limited & Others³**.

7. The first and second pleas of the appellant go together. Admittedly the accident has occurred in the night (11.00 pm) at the

¹ 2017(6) ALD 170 (SC)

² 2018 LawSuit (SC) 904

³ 2018 LawSuit (SC) 1192

outskirts of Husnabad near a culvert, which is not a residential area, and there were no houses or people moving at that time. Hence, it was not possible for anybody to witness the incident. Though P.Ws.1 to 4 deposed before the Tribunal that they had not witnessed the incident, in the charge sheet (Ex.A.4), the Investigating Officer categorically stated that in the process of investigation, he had examined P.Srinivas Reddy, the owner of the vehicle, and he admitted to have employed Bandi Sadaiah, (fourth respondent herein) for the last two years and he has been driving his tractor; on the day of incident, Bandi Sadaiah went to Husnabad to transport rice bags from Husnabad to Keshavapatnam; while returning, he drove the tractor in a rash and negligent manner and dashed the deceased at the outskirts of Husnabad, as a result, the deceased sustained severe injuries and died at the scene. R.W.1, Sai Sambashiva Rao, employee of the insurance company, has categorically deposed that it is a fact that as per the contents of the charge sheet (Ex.A.4), the accident had occurred due to the negligence on the part of the driver, but he has not denied the contents of the charge sheet. The insurance company, in its defence, has not taken any stand before the Tribunal to disbelieve the version of the Investigating Officer. Moreover, when the Police is a neutral agency and has no interest, no malafides have been attributed against investigation. In view of the above evidence, this Court is satisfied that the tractor and trailer bearing No.AP15AH 3020/3021 is involved in the accident and that accident had occurred due to the rash and negligent

driving of the fourth respondent only. Hence, the first and second pleas of the appellant are negatived.

8. Insofar as the third plea of the appellant is concerned, as seen from the record, P.W.4, Pasham Mogali, deposed that he was working as Master Cook in Dhaba of the deceased; the deceased used to pay Rs.300/- per day to him. The said deposition has not been shattered by the insurance company. When a Master Cook was paid Rs.300/- per day, which comes to Rs.9,000/- per month, taking the income of the deceased, who is the owner of the hotel, at Rs.7,000/- per month by the Tribunal is just and reasonable. Therefore, I see no reason to interfere with the said finding. Thus, the third plea of the appellant is also negatived.

9. Insofar as the fourth plea of the appellant is concerned, the Tribunal granted Rs.1,00,000/- towards consortium to the wife, Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses and transportation charges. The Tribunal, by taking into consideration the judgment in **Anjani Singh Vs. Salauddin**⁴, has awarded the said sums. In the said judgment, the Apex Court granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection of the children and the parent and Rs.1,00,000/- towards loss of consortium by the widow of the deceased. It is to be noted that the Full Bench of the Apex Court in **Pranay Sethi**'s case (supra), has considered in detail about the granting of conventional charges. In the said case, the Full Bench did not agree with the view expressed

⁴ 2014 ACJ 1565

in **Rajesh and Others Vs. Rajbir Singh**⁵ with regard to granting of Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of care and guidance for minor children and awarded conventional heads i.e., Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses.

10. Here a question arises whether the conventional head 'loss of estate', as defined in **Pranay Sethi's** case (supra), and the amount granted by the Tribunal in the present case under the head 'loss of love and affection' is one and the same or not?

11. To better appreciate the permissibility, suitability or otherwise of awarding compensation separately for the head "loss of love and affection" and "loss of estate", I deem it expedient to refer to the literal context term "estate". The word "estate" in common parlance would mean property, a large extent of land, a Will or the money (often huge sums) or anything tangible that a person possesses by the date of his death; and by a reasonable extension of the interpretation of the term, could also mean such tangible things that such a person would have possessed had he continued to live. One other meaning for the term "estate", as per the Cambridge International Dictionary crucial to the context of life, is "state of being"; for example *holy estate of marriage* or *a man's estate (=adulthood)*. Viewed in this sense, in the present case, the phrase "loss of estate" would mean the loss to a person suffering bereavement with respect to his "state of being" (which, in the

⁵ 2013 ACJ 1403

present case, the loss of continuity in the holy estate of marriage on account of death of the deceased).

12. Coming to loss of “love and affection”, “love” and “affection”, being intangible and beyond one’s physical or material possession, they are the reverberations of one’s feelings within one’s self especially in the companionship of someone deeply related with emotionally. Unlike material things or physical possessions, to which one may feel an attachment during the existence or “shelf life” of such material things, love and affection being non-physical aspect of one’s being, they cannot be replaced or substituted with anything material; and therefore they are almost always connected with the emotional responses that one experiences with a person or companion during the state of living. And if either of the companion dies, such love and affection are deeply affected leaving a vacuum that can never be filled.

13. Though it appears to a layman that the terms of ‘loss of love and affection’ and ‘loss of estate’ are like terms, a subtle distinction exists and, if one takes a closer look, though they overlap to a certain extent, they can at best be said to be interconnected rather than interchangeable. Furthermore, in cases of victims of motor accidents, and specially in cases of this nature as the present one, one cannot employ a common yardstick or any such hard and fast rule to draw unrealistic borders. It is needless to state that the Motor Vehicles Act being a beneficial legislation, and almost always the Courts have been taking a sympathetic view to award compensation, so far as money can do so, to alleviate the suffering

that the tragedy has caused, I deem it appropriate, in the facts and circumstances of the present case, to award compensation towards loss of love and affection in addition to the loss of estate.

14. Therefore, the amount of Rs.1,25,000/- granted by the Tribunal i.e., Rs.1,00,000/- towards loss of consortium to the wife and Rs.25,000/- towards funeral expenses and transportation charges are reduced to Rs.70,000/-, while confirming the amount of Rs.1,00,000/- awarded by the Tribunal under the head loss of love and affection.

15. Insofar as the fifth plea of the appellant that the Tribunal wrongly awarded excessive amount of Rs.11,21,064/-, though the claimants claimed an amount of Rs.8,00,000/- is concerned, the Tribunal by taking into consideration the dicta laid down by the Apex Court in **Rajesh**'s case (supra), awarded the compensation amount in excess of the amount claimed by the claimants. In the said case, the Apex Court held that the Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for award of compensation. Therefore, I see no force in the said contention and the same is rejected.

16. The Motor Accident Civil Miscellaneous Appeal is partly allowed modifying the award of compensation from Rs.11,21,064/- to Rs.10,66,064/- with interest @ 7.5% per annum. Miscellaneous

petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 23-04-2019

Note:

L.R. Copy to be marked.

B/o. TJMR

