HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.802 of 2010

JUDGMENT:

The National Insurance Company Limited, which is arrayed as 2nd respondent in MVOP.No.312/2006 on the file of the Motor Accidents Claims Tribunal, Nizamabad (for short 'the Tribunal'), preferred the instant appeal having got aggrieved by the said award, whereby and whereunder, the Tribunal has granted a sum of Rs.12,86,400/- with interest at 9% per annum. The claimants are respondents 1 to 6 and the owner of the vehicle is the 7th respondent in the present appeal.

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

3. The fact-situation occurring in the instant case is that on 25.06.2005 the deceased A.Prabhaker Reddy came to Nizamabad to purchase a new Auto Trolley; that after purchase when he was returning to his place Adilabad after performing pooja to the vehicle, at about 9.30 P.M, when he reached in-front-of Uppala Mallaiah Petrol Bunk, one Lorry bearing No.AP 27/V 0639 came from opposite direction at high speed and dashed against the Auto in a rash and negligent manner by its driver, due to which the deceased sustained injuries on head, neck, forehead and other parts of the body and died on the spot. On the date of the accident the

deceased was aged 32 years and was hale and healthy and was earning Rs.50,000/- per month. On account of death of the deceased the petitioners who are the legal heirs of the deceased are put to irreparable loss and therefore, claimed compensation of Rs.40,00,000/-.

4. The 1st respondent-owner of the Lorry involved in the accident was set exparte.

5. The 2nd respondent-Insurer of the Lorry filed counter denying the averments in the OP, manner of accident, rash and negligence on the part of the driver of the lorry, age occupation and income of the deceased, relationship of the petitioners with the deceased. It also denied that the lorry allegedly involved in the accident is insured with this respondent and contended that even if the lorry is insured with this respondent the liability of this respondent is strictly governed by the provisions of M.V.Act, Rules, Insurance Act and subject to payment of premium to cover the risk of passengers; and that breach of terms and conditions of the relevant insurance policy does not make this respondent liable for any compensation. It is also contended that the compensation claimed by the petitioners is excessive and prayed to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During the enquiry before the Tribunal, on behalf of petitioners PWs.1 to 5 were examined

and exhibits A1 to A8 were marked. On behalf of respondents RW1 was examined and exhibits B1 to B3 were marked.

7. The Tribunal, on issue No.1, on appraisal of both oral and documentary evidence, arrived at the conclusion that only due to rash and negligent driving of the driver of the Lorry bearing No.AP 27/V 0639, accident had occurred and held it in favour of the petitioners.

8. a) On issue No.2, the Tribunal, basing on Exs.A2-Inquest Report, A4-Post Mortem Report taken the age of the deceased as 32 years.

b) The Tribunal while determining the income of the deceased stated that the evidence adduced by the petitioners shows that the deceased was an agriculturist, raising commercial crops and used to sell the same at Agricultural Market Committees, Dharmabad and Bhainsa but did not adduce evidence to prove that the deceased was earning Rs.50,000/- per month, in the absence of proof of exact income of the deceased, the Tribunal has taken the income of the deceased at Rs.10,000/- per month and by deducting 1/3rd towards his personal expenditure calculated Rs.80,000/- as contribution of the deceased to his family. The Tribunal, by relying on the Judgment rendered by this Court in ***Bhagwandas v. Mohd. Arif (1987 ACJ 1052)*** has taken the multiplier as '15.83' and calculated the future contribution of the deceased at Rs.12,66,400/-

(80,000 x 15.83). The Tribunal awarded an amount of Rs.15,000/- towards consortium to the wife of the deceased and also Rs.5,000/- towards transportation charges and funeral expenses. In total the Tribunal has awarded an amount of Rs.12,86,400/- towards compensation payable by the respondents 1 and 2 jointly and severally with interest @ 9% p.a. from the date of petition till the date of realization.

9. Aggrieved the compensation awarded by the Tribunal, the 2nd respondent-National Insurance Company, filed the present appeal.

10. Learned Counsel for the appellant-National Insurance Company, submits that the Tribunal has wrongly taken the income of the deceased @ 10,000/- per month for calculating the future contribution of the deceased to his family, though there is no evidence that the lands of the deceased were kept fallow because of the death of the deceased in the accident. He submits that the interest awarded by the Tribunal @ 9% p.a. is also excessive11. On the other hand Sri V.Tulasi Reddy, appearing for the respondents/claimants submits that before accident the deceased used to look after his lands. After his death if any Supervisor is appointed to look after the agricultural lands of the deceased, he has to be paid supervisory charges. As such, the income arrived at by the Tribunal at Rs.10,000/- per month cannot be interfered. He also submits that since claimants are six in number, the deduction

should be 1/4th towards personal expenses, but the Tribunal deducted 1/3rd from the income of the deceased towards personal expenses, as such, the claimants are entitled for enhancement of compensation. . He further submits that the Tribunal has taken the multiplier basing on the Judgment of ***Bhagwandas*** which is erroneous ; and that the Tribunal has to take into account the principles laid down by the Apex Court in ***Sarla Verma and others v. Delhi Transport Corporation and Another (2009) 6 SCC 121*** while calculating the future contribution of the deceased. He further submits that even though there is no appeal or cross objections filed by the respondents/claimants for enhancement of compensation the appellate Court has power to enhance compensation. In support this contention he relied on the Judgment rendered by the Delhi High Court in ***Union of Inida v. Dhyan Singh and others 2013 ACJ 2644.***

12. Learned counsel for the appellant submits that the compensation can be enhanced only when correction is required in computational errors, in other cases enhancement cannot be granted in the appeal filed by insurance company but in this case it is not so.

13. a) In this case it is to be seen that admittedly, there is no dispute regarding age of the deceased.

b) Regarding income of the deceased PW3-Sanjeev Reddy, resident of Bhainsa and PW4-Sai Mohan Reddy, resident of Dharmabad reveals that the deceased had 25 to 26 acres of land and he used to raise cotton, chillies, turmeric and other commercial crops and used to sell the same in their shops. Petitioners have not filed any documents to show that the deceased was doing mineral water business and was earning Rs.50,000/- per month. In the evidence of PW5-M.A.Habeeb, Tahsildar of Bhainsa, he stated that as per Ex.A9 the deceased was raising cotton, chillies and used to earn Rs.6 lakhs per annum and after the death of the deceased, the lands are kept fallow. The evidence of PW5 further shows that as per the report of the VRO the deceased had Ac.10.30 guntas of land at Degaon village, Ac.5.12 guntas at Badgaon and basing on the reports submitted by the VRO and MRI, he issued Ex.A9. Ex.A2 inquest report reveals that occupation of the deceased is business. Ex.A7 copy of the Adangal/Pahany indicates that the deceased was cultivating commercial crops. Ex.A8 receipts issued by Krishi Utpanna Bazaar Samithi, Dharmabad and the receipts issued by Takpatti Grain Cotton Market, Bhainsa indicate that the deceased used to supply chillies and cotton.

c) After taking into account the aforesaid evidence and documents, the Tribunal came to the conclusion that the income of the deceased can be taken at Rs.10,000/-. As such, the contention of learned counsel for the appellant that Rs.3,000/- per month is the appropriate income, cannot be accepted.

d) As per the Judgment rendered by the Apex Court in **Sarla Verma's** case, for the deceased person aged 32 years, the multiplier that has to be adopted is '16' and 1/4th of the income of the deceased has to be deducted towards personal expenses instead of 1/3rd since claimants are more than 4. If these two factors are taken into account the respondents/claimants are entitled to enhancement of compensation.

14. Though learned counsel for the appellant submits that the compensation cannot be enhanced in the appeal filed by the insurance company, but when the deduction towards personal expenses calculated by the Tribunal is patently erroneous and the multiplier adopted by the Tribunal is against the Judgment of the Apex Court in **Sarla Verma's** case, the same can be corrected as they are only computational errors (See Union of India v. Dhyan Singh and others, 2013 ACJ 2644). In view of the same, the respondents/claimants are entitled to enhancement of compensation.

15. As rightly contended by the learned counsel for the appellant interest has to be reduced from 9% to 7.5% as the Apex Court has been granting interest @ 7.5% p.a. The same is required to be reduced.

16. In view of the above, future contribution of deceased to his family.

Income of the deceased	= Rs.10,000
Less: 1/4th towards personal expenses	= Rs. 2,500
	Rs. 7,500

Future Contribution of the deceased to his family comes to Rs. 14,40,000 (7,500 x 12 x 16). As per the Judgment rendered by the Apex Court in ***National Insurance Company Limited v. Pranay Sethi and others*** (2017 ACJ 2700 = AIR 2017 SC 5157) an amount of Rs.70,000/- has to be awarded towards consortium, loss of estate, funeral expenses and Transportation charges. Out of which first respondent alone is entitled for Rs.40,000/- towards loss of consortium.

17. As per the aforesaid Judgment rendered by the Apex Court in ***National Insurance Company Limited v. Pranay Sethi and others*** the claimants are also entitled to future prospects. Though, the learned counsel for the appellant states that enhancement of compensation cannot be granted in the appeal filed by the insurance company, as per the decision rendered by the Delhi High Court in ***Union of India's case,*** relied on by the learned counsel for the claimants, the Court has power to enhance the compensation in the absence of cross-objections by the claimants. The relevant paragraph in the said decision reads as follows;

> "32.Learned counsel for the appellant submits that the plaintiffs/respondent Nos.1 to 7 have not filed any cross-objections and, therefore, the compensation cannot be enhanced. The argument of learned counsel for appellant is misconceived and contrary to law. It is well settled that under Order-41, rule 33 of the Code of Civil Procedure, the appellate Court has power to enhance the compensation even in the absence of cross-objections. Reference in this regard can be made to the recent judgment of this Court in ***National Insurance Company Limited v. Komal (MANU/DE/2870/2012),*** in which this court enhanced compensation in the absence of cross-objections following the catena of the Judgments of the Supreme Court and various High Courts in *Pannalal v. State of Bombay (AIR 1963 SC 1516); Rameshwar Prasad v. Shyam Beharilal Jagannath [(1964) 3 SCR 549]; Nirmal Bala Ghose v. Balai Chand Ghose (AIR 1965 SC 1874); Giani Ram v. Ramjilal (AIR 1969 SC 1144); Harihar Prasad Singh v. Balmiki Prasad Singh (AIR 1975 SC 733); Mahant Dhangir v. Madan Mohan (AIR 1988 SC 54); State of Punjab v. Bakshish Singh (AIR 1999 SC 2626); Nagappa v. Gurudayal Singh (2003 ACJ 12 (SC); Oriental Fire and Genl.Ins.Co.Ltd. v. Amarsing Pratapsing Sikliker (1994 ACJ 240 (Gujarat); and Prakramchand v. Chuttan (1991 ACJ 1051 (MP).*"

In view of the aforesaid decision, since the deceased was aged 32 years at the time of his death, 40% of the actual salary of the deceased has to be taken as future prospects. As such, an amount of Rs.5,76,000/- (7,500 x 12 x 16 x 40/100) has to be awarded to the claimants towards Future prospects.

18. In view of the above facts and circumstances the claimants are entitled to;

Future contribution by deceased to the family towards loss of income	Rs.14,40,000
Towards loss of consortium, loss of estate, funeral expenses and transportation charges (out of which 1st respondent is entitled to Rs.40,000/- towards loss of consortium)	Rs. 70,000
Amount towards future prospects	Rs. 5,76,000
Total	Rs. 20,86,000

19. Accordingly, the MACMA is disposed of granting compensation of Rs.20,86,000/- as against Rs.12,86,400/- awarded by the Tribunal. The appellants are entitled to interest on the compensation awarded at 7.5% per annum from the date of petition till realization. The Tribunal to deduct the deficit Court fee after the respondents deposit the enhanced amount. No order as to costs.

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

A.RAJASHEKER REDDY, J

23.01.2019
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