HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.1801 of 2010

JUDGMENT:

The appellants-claimants filed this appeal against the order and decree dated 16-06-2010 passed in O.P.No.410 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (Tribunal) granting compensation of Rs.4,23,000/- along with costs and interest @ 7.5% per annum as against the claim of Rs.10,00,000/- for the death of deceased Pothuganti Bhumaiah (deceased) in the motor accident occurred on 02-12-2005 for enhancement of compensation.

02. The appellants herein, are wives, mother and children of deceased Bhumaiah and respondent No.1 is the owner of the auto bearing No.AP-25-V-1338 and respondent No.2 is the Insurance Company in the original petition.

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

04. The petitioners filed claim petition under Section 166 (1) (c) of the Motor Vehicles Act,1988 alleging that on 02-12-2005 at about 8.15 p.m. deceased along with other

person was going on foot to the left side of the road from Velmal Village to Velmal cross roads to go to Nandipet, when they reached near the cross roads of Velmal village, all of a sudden one auto bearing No.AP 25-V-1338 driven at high speed and in a rash and negligent manner came to wrong side of the road from Nandipet and hit the deceased and other person. As a result, deceased fell down by the side of the road and sustained grievous injuries including head injuries. Immediately, deceased was shifted to Government Hospital, Nizamabad while undergoing treatment he died on the same day at about 9.45 pm. Basing on the complaint, Nandipet police registered a criminal case in Cr.No.161 of 2005 under Sections 304-A and 337 IPC. At the time of death, deceased was aged about 45 years and was running a laundry shop and earning Rs.10,000/- per month. Respondent Nos 1 and 2 being the owner and insurer of the crime vehicle, they are jointly and severally liable to pay the compensation.

05. Respondent No.1 filed counter, but he did not admit the negligence on the part of the driver bearing No.AP-25-V-1338 and also the age, avocation and monthly income of deceased. It is also stated that at the time of accident, the auto owned by him was insured with respondent

No.2 and the policy was in force and the driver was driving the vehicle with valid licence. It is also stated that the claim made by the petitioners is excessive and disproportionate to their entitlement. Hence, prayed to dismiss the petition against this respondent.

06. Respondent No.2 filed counter affidavit and denied that there was negligence on the part of driver of the auto bearing No.AP-25-V-1338. It is also denied that the driver of the auto was holding valid licence to drive the vehicle at the time of accident and he was authorized to drive the passenger auto. This respondent also denied that deceased suffered the injuries in the alleged accident and died on account of receiving injuries in the alleged accident. This respondent also denied the age, occupation and income of deceased. It is also stated that the claim of the petitioners is excessive and disproportionate to their entitlement. The owner of the auto has not informed about the accident, which amounts to violation of policy terms and conditions, as such Insurance Company is not liable to pay any compensation.

07. On the basis of above pleadings, the Tribunal has framed the following issues for its consideration:

1. Whether the accident occurred due to rash and

negligent driving of driver of auto bearing No.AP 25-V-1338?

2. Whether the petitioners are entitled for compensation? If so, to what just amount and from which of the respondents?
3. To what relief?

08. On behalf of the appellants, PWs 1 and 2 were examined and marked Exs.A1 to A-6. Ex.B.1 Insurance policy was marked on behalf of respondent No.2. The 2nd respondent filed I.A.No.1812 of 2009 under Section 170 of the Act and the same was allowed.

09. On elaborate consideration of the evidence of PWs 1 and 2, and Exs.A.1-certified copy of FIR, Ex.A.2-certified copy of charge-sheet, Ex.A.3 is certified copied of inquest panchanama, Ex.A.4 is certified copy of PME report, Ex.A.5 certified copy of MVI report and Ex.A.6 is Xerox copy of Insurance policy, the Tribunal has granted compensation of Rs.4,23,200/- to the appellants along with interest @ 7.5% per annum from the date of petition till the date of deposit. Questioning the quantum of compensation, the present appeal came to be filed by the appellants.

10. Learned counsel for the appellants submits that though deceased was earning Rs.10,000/- per month, the Tribunal has taken only Rs.3,000/- as income, which

is on lower side. She also submits that as per the Apex Court judgment in ***National Insurance Company Limited vs. Pranay Sethi***[1], the appellants are entitled for Rs.70,000/- towards non-pecuniary damages for funeral expenses, loss of estate and towards loss of consortium. But the Tribunal has granted only Rs.25,000/- under the said heads. Learned counsel has not disputed regarding multiplier adopted by the Tribunal at '14' by relying on the judgment of ***Sarla Verma vs. Delhi Transport Corporation***[2], since age of deceased was 44 years at the time of accident.

11. In this case, it is to be seen that since it is a claimants appeal, the Tribunal has held that accident occurred due to rash and negligent driving of auto bearing No. AP 25-V-1338, the only issue required to be considered is whether the compensation granted by the Tribunal requires to be enhanced.

12. It is the case of petitioners that deceased used to earn Rs.10,000/- per month, as no documentary evidence was filed, the Tribunal has taken income of deceased at Rs.3,000/- per month only. After deducting 1/5th of the income towards personal expenses, Rs.28,800/- per annum was taken. But this Court is of

---

[1] 2017 Law Suit (SC) 1093
[2] 2009 (6) SCC 121

the opinion that it is just and necessary to take Rs.4500/- per month as income of deceased, since the Supreme Court in ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***[3] held as under:

> *"14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases an in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the*

[3] 2011 (6) ALT 48 (SC)

accident, the wage of the labourer was between 100/- to 150/- per day or Rs.4,500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from 4,500/- to 3,000/- per month. We, therefore, accept his statement that his monthly earning was '4,500.

13. In the present case, it is not the case of the appellants that deceased was a Coolie. It is their specific case that deceased used to earn Rs.10,000/- by running laundry shop. Hence, it is just and proper to take his earnings at Rs.4500/- per month and Rs.54,000/- per annum. As the dependants of deceased are seven in number, as per the ratio laid down by the Supreme Court in ***Sarla Verma*** (2 supra), $1/5^{th}$ has to be deducted from the earnings of the deceased towards personal expenses, which comes to Rs.43,200/- and the appropriate multiplier is '14'. Then, the loss of dependency works out to Rs.6,04,800/-. In addition, as per the ratio laid down in the judgment of ***Pranay Sethi*** (1 supra), the petitioners are entitled for Rs.70,000/- under non-pecuniary damages. Out of which, the 1^{st} appellant alone is entitled for Rs.40,000/- towards consortium. Thus, in all, the petitioners are entitled for Rs.6,74,800/- towards compensation.

14. Accordingly, the appeal is allowed enhancing the compensation granted by the Tribunal from Rs.4,23,200/- to Rs.6,74,800/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization payable by the respondents jointly and severally.

15. 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.

As a sequel to the disposal of this appeal, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

12-03-2019

Nvl