THE HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A. C.M.A. No.1853 OF 2010

JUDGMENT:

This appeal is preferred by the petitioners in OP.No.423 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal (District Judge) at Nalgonda (for short, 'the Tribunal'), dissatisfied with the award dated 13.09.2010 granting a sum of Rs.4,16,840/- towards compensation as against Rs.10,00,000/- claimed under Section 166 and 163-A of the M.V.Act, 1988 and Rules-455 of A.P.M.V.Rules, 1989, r/w.Sec.140 of the M.V.Act, 1988 (for short 'the Act').

2. The appellants herein are the petitioners before the Tribunal, while the respondent Nos.1 and 2, are the owner and insurer of the Lorry bearing No.AHJ-6588, respectively.

3. The fact-situation occurring in the instant case is that on 06.07.2005 while the deceased was crossing the road at Thotacherla Village on N.H.9, a lorry bearing No.AHJ-6588, driven by its driver in a rash and negligent manner with high speed came from Vijayawada side and dashed the deceased, due to which the deceased sustained grievous injuries and died on the spot. Police, Penuganchiprolu, Krishna District, have registered a case in Crime No.117/2005 under Sec.304-A IPC against the driver of the lorry. It is stated that the deceased was hale and healthy at the time of accident; that due to premature death of the deceased, the petitioners suffered a lot and facing

many difficulties for the maintenance. Hence, they claimed Rs.10,00,000/- towards compensation for the death of the deceased.

4. The 1st respondent-owner of the offending vehicle remained exparte.

5. The 2nd respondent-Insurance Company, filed counter denying the allegations made in the petition and it is for the petitioners to prove the manner of the accident, age and income of the deceased and stated that there was no negligence on the part of the driver of lorry bearing No.AHJ-6588. It does not admit that the person who drove the lorry was having valid driving license at the time of accident to drive the lorry and further stated that due to the negligence on the part of the deceased the accident was caused and the compensation claimed by the petitioners is high and excessive and prayed to dismiss the petition with costs.

6. Basing on the pleadings, the Tribunal framed the following issues;

1. Whether the deceased died in the motor vehicle accident due to rash and negligent driving of the lorry bearing No.AHJ 6588?

2. Whether the petitioners are entitled to claim compensation? If so, to what amount and from whom?

3. To what relief?

7. During enquiry before the Tribunal, the 1st petitioner who is wife of the deceased was examined as PW1, the Superintendent, Kodad Depot, APSRTC, where the deceased was working at the time of accident, was examined as PW2 and one Bojja Gopal who is an eye witness to the accident was examined as PW3, and Exs.A1 to A9 were marked on behalf of the petitioners. On behalf of 2nd respondent RW1 was examined and Exs.B1 to B9 were marked.

8. The Tribunal, on appraisal of the evidence of PW1 and PW3, coupled with documentary evidence of Ex.A1-Copy of FIR, A2-copy of Charge Sheet, A3-copy of Inquest Report, tendered the finding on issue No.1, in favour of the petitioners.

9. On issue No.2, the Tribunal basing on the evidence of PW2 and Ex.A7, has taken the income of the deceased at Rs.3,307/- per month which comes to Rs.39,684/- per annum. With regard to age, the Tribunal, basing on the evidence of PW2 who stated that as per service register the date of birth of the deceased was 15.05.1961, and basing on Ex.A8-service register and Ex.A4-Post Mortem Report, treated the age of deceased as '44' years as on the date of death. After deducting 1/3rd towards personal expenses from the annual salary, calculated the net contribution of the deceased to the family at Rs.26,456/-. As the deceased was '44' years, applied the multiplier '15' and calculated the loss of income or dependency at Rs.3,96,840/-. The Tribunal awarded Rs.15,000/- to the wife of the deceased

towards consortium and Rs.5,000/- towards funeral expenses. Thus, in total awarded a total amount of Rs.4,16,840/- towards compensation to the petitioners with interest @ 7.5% p.a. from the date of petition till the date of realization making the respondents 1 and 2 liable to pay the compensation.

10. Dissatisfied with the award of compensation granted by the Tribunal, the petitioners, who are the wife, son and mother of the deceased, preferred the instant appeal impugning the award seeking for enhancement of compensation with interest thereon and costs.

11. Heard both sides.

12. Learned counsel for the appellants submits that though the deceased was earning Rs.8,312/- as gross salary as per Ex.A7 and though PW2 who is the Superintendent, Kodad Depot, APSRTC, deposed that the deceased was working in APSRTC and drawing Rs.8,312/- per month as gross salary, the Tribunal has taken the Net Salary of Rs.3,301.50 ps. for calculation of loss of dependency, which is erroneous. He also submits that no amount was granted by the Tribunal towards future prospects 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). He further submits that as per the aforesaid Judgment of the Apex Court the claimants are entitled to a sum of Rs.70,000/- towards consortium, loss of estate, funeral expenses and

Transportation charges. But, the Tribunal has granted only Rs.20,000/- towards the same, which is erroneous.

13. In this case it is to be seen that the trial Court basing on the evidence of PW1 and PW3 who is an eye witness and by relying on the documents i.e. Exs.A1 to A5 held that the accident has occurred due to the rash and negligent driving of the 1st respondent which finding tendered by the Tribunal, cannot be interfered with, as it is claimants' appeal for enhancement of compensation and that no appeal is filed by the respondents against the said finding.

14. Now, the short point that arises for consideration is, whether the petitioners are entitled to enhancement of compensation?

15. In this case, the deceased was working as Conductor in APSRTC and was drawing an amount of Rs.3,301.50 ps. per month as net salary and Rs.8,312/- per month as gross salary. He filed Ex.A7-salary certificate. In the evidence of PW2 who identified Ex.A7 issued from their office and admitted that the deceased was drawing net salary of Rs.3,301.50 ps. and Rs.8,312/- per month as gross salary. But, no reason is mentioned by the Tribunal in the impugned order as to why only net salary is taken for calculation of loss of dependency when the deceased was drawing gross salary of Rs.8,312/-. There is no dispute regarding age of the deceased and also regarding multiplier adopted by the Tribunal.

16. As per the Judgment rendered by the Apex Court in ***Pranay Sethi case (supra)*** which was relied on by the appellant, when the deceased has fixed earning, 30% of the salary has to be added towards future prospects of the deceased. But, the Tribunal has not awarded any amount towards future prospects.

17. The petitioners are also entitled for Rs.70,000/- towards loss of consortium, loss of estate, funeral expenses and Transportation charges.

18. In view of the above, the petitioners are entitled to the following amount towards compensation.

Gross Salary of the deceased per annum (8,312 x 12)	Rs.99,744
Less: 1/3rd towards personal expenses	Rs.33,248
Contribution of the deceased to his family p.a.	Rs.66,496
Relevant multiplier	x 15
Loss of Contribution to the family (66,504 x 15 multiplier)	Rs.9,97,440
Add: 30% towards future prospects	Rs.2,99,232
	Rs.12,96,672
Add: Amount towards loss of consortium	Rs. 40,000
Amount towards Loss of estate, funeral expenses and Transportation charges	Rs. 70,000
Total amount of compensation	Rs.13,66,672

19. Thus, in total the petitioners/appellants are entitled to Rs.13,66,672/- towards compensation.

20. Though the claimants claimed only Rs.10,00,000/- as per the Judgment relied on by the petitioners in ***Adam Indur Muttemma and others v. Rathod reddia and others*** [1] there is no bar in granting just compensation in excess of the claim made by the petitioners subject to payment of court fee on the additional amount granted.

21. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned award is modified enhancing the compensation from Rs.4,16,840/- to Rs.13,66,672/- and the same is accordingly granted. The appellants are entitled to interest on the enhanced compensation of Rs.9,49,832/- at 7.5% per annum from the date of petition till realization. The Tribunal is directed to deduct differential court fee on deposit of enhanced compensation.

22. The enhanced compensation is apportioned among appellants in proportion to the amounts awarded by the Tribunal. First appellant alone is entitled for Rs.40,000/- towards consortium.

As a sequel thereto, Miscellaneous Applications, if any pending, in this appeal stand closed.

A. RAJASHEKER REDDY, J

Date: 21.02.2019
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[1] 2015 (4) ALT 775 (L.B)