

THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.1720 OF 2013

JUDGMENT:

Heard Sri G.Chandrasekhar Reddy learned counsel for the appellants and Sri M.Jeevan Reddy learned counsel for the respondents.

2. The claim petitioners preferred this appeal seeking enhancement of compensation awarded in the decree and order dated 15.09.2006 in O.P.No.1054 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal (Prl.Dist.Judge), at Nalgonda.

3. The Wife, son, daughter and mother of Sunkaraboina Saidulu, who died in the motor accident dated 16.12.2004 filed claim petition seeking compensation of Rs.4,00,000/-.

4. The brief case of the petitioners is that on 08.12.2004 while Saidulu /deceased was proceeding to the fields on foot at Muthyalammagudem Village of Kattangur Mandal,

Nalgonda District, A DCM Van bearing No.AP-28-U-7200 (herein after “the Van”) driven in rash and negligent manner dashed him caused severe injuries and while undergoing treatment he succumbed to injuries on 16.12.2004. Thus the claim petition.

5. The Tribunal after the enquiry and analyzing the material held that the accident occurred due to the negligent driving of the Van and awarded compensation of Rs.2,28,000/- with interest at 7.5 % per annum against the owner and insurance of the Van/1st and 2nd Respondent.

6. The appellant/petitioners (herein after the petitioners) contested that the Tribunal erred in fixing the notional monthly income at Rs.1,500/- without considering the occupation of the deceased as agricultural labourer. In addition, future prospects were also not considered and meager amount was granted under conventional heads. Thus, prayed for re-assessment and for granting just compensation.

7. Learned counsel for the 2nd respondent/insurer (herein after “the respondent”) supported the findings in the Award and pleaded that appropriate amounts were granted to the petitioners as compensation. Further submits that the petitioners failed to point any material to substantiate the income, thus the monthly income had rightly been taken at Rs.1,500 and there is no reason to interfere with the impugned Award.

8. In this position, the aspect for determination would be:

Whether the petitioners are able to make out any ground for enhancement of the compensation, as prayed for ?

9. The petitioners asserted that the age of the Saidulu /deceased was age about 25 years and he was earning Rs.3,000/- per month as a agricultural labour by the date of accident. In this regard, except for the testimony of PW1 there is no other material on file to prove these factors. Therefore, relying on the entries in Ex-A3/ Autopsy report, the Tribunal believed the age of the deceased as 23 years, and this reasoning is found acceptable. Further, no

documentary proof can be expected for the occupation income of an agricultural labour. However, having regard to the wages of manual labour at relevant time, notionally fixing a wage of Rs.100/- per day and monthly income at Rs.3000/- per month, is found appropriate. Accordingly, the finding in this regard is modified.

10. Further, the Hon'ble Supreme Court in the dictum of **National Insurance Company Ltd. vs. Pranay Sethi and others.**¹ held that in computing the loss of dependency the future prospects of income of a self-employed shall also be included. Correspondingly, considering the age of the deceased, 40 % of the income has to be added towards the future prospects. Admittedly, as the deceased was bachelor, as per the authority of **Sarla Verma & Ors Vs Delhi Transport Corp. & Anr**², $\frac{1}{2}$ of the income shall be deducted towards the personal expenditure. Consequently, the annual contribution of the deceased to the petitioners would be Rs.33,600/-. The said amount if multiplied with appropriate multiplier to the age of the deceased i.e., 17 the

¹ (2017) 16 SCC 860

² ACJ 2013 Page 1409

total sum would be Rs.5,71,200/-. The petitioners are entitled to this amount towards 'Loss of Dependency'.

11. Besides, the petitioners are also entitled for compensation under 'conventional heads' as held in the dictum of *Pranay Sethi* (supra) i.e., Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral charges and Rs.40,000/- to the petitioners towards spouse consortium.

12. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation to 'consortium' given in the authority of ***Magma General Insurance co. Ltd. vs. Nanu Ram & ors.***³, in the authority between ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others***⁴ reinforced that the amounts for loss of consortium shall be awarded to the children as parental consortium for the loss of the parental aid, protection, security, love and affection and to the parents towards 'filial consortium' for the loss of their grown-up children, to compensate their agony, love and affection, care and

³ (2018) 18 SCC 130

⁴ Civil Appeal No.2705 of 2020, dt.30.06.2020

companionship of deceased children. Accordingly, the 2nd and 4th petitioners are entitled to Rs.40,000/- each as parental consortium, likewise, the 3rd petitioner is granted Rs.40,000/- as filial consortium.

13. Therefore, the petitioners are entitled for the following amounts, viz., :

DESCRIPTION	AMOUNT (Rs.)
Loss of Dependency	5,71,200.00
Loss of Estate	15,000.00
Funeral Charges	15,000.00
spouse consortium 1 st appellant	40,0000
Parental Consortium to the 2 nd & 4 th petitioner.	80,000.00
Filial consortium to the 4 th petitioner	40,000.00
TOTAL	7,61,200.00

14. The Section 168 in Motor Vehicles Act, 1988 contemplates that the Courts shall endeavor to award the just compensation. The Hon'ble Apex Court in **Nagappa Vs. Gurudayal & Ors.**⁵ held that just compensation shall be awarded, if the claimants are entitled to, even if the awarded amounts are beyond the claimed amount in the petition. Accordingly the just compensation arrived in the preceding discussion shall be granted to the petitioners.

⁵ (2003) 2 SCC 274]

15. For the aforesaid reasons, the Appeal is allowed as follows:

(i) the Appellant/petitioner are awarded Rs.7,61,200/- (Rupees Seven Lakhs Sixty One Thousand and Two Hundred Rupees only) with interest @ 7.5% per annum with costs., from the date of petition till date of realization;

ii) the 1st and 2nd respondents are directed to deposit the awarded amount within one month from the date of receipt of a copy of this judgment;

(iii) the apportionment among the petitioners shall be in terms of the tribunal award.

(iv) On deposit of the awarded amount, the petitioners are permitted to withdraw the entire amount apportioned in their favour.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N.TUKARAMJI, J

Date: 22.07.2022
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