**THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

**MA.CMA.NO.1102 OF 2015**

**JUDGMENT**

Assailing the order and decree dated 19.01.2005 passed by the court of Principal Motor Accidents Claims tribunal (Principal District Court) At Warangal in MVOP.No.529 of 2000, the claimants filed the present appeal.

2. The deceased is one Pothula Komuraiah, and the claimants are his wife and children.

3. In the claim petition it is stated that the deceased was aged 40 years, and an employee of A.P.Civil Supplies Corporation. That on 4.4.2000 when the deceased was coming on his scooter near Panthini village, the tractor and trailor AEO 2557/2558 was parked on the middle of the road without any parking lights or indication. The deceased while coming towards Hanamkonda, noticed a lorry in the opposite direction, and as there was no indication, and due to the focus of lorry lights, he could not notice the tractor/trailer, and he dashed against the Tractor-Trailor, and received injuries, and died.

4. It is further stated that the deceased was drawing a monthly salary of Rs.6,581/- and aged 40 years. The claimant No.1 is his wife and claimants 2 to 4 are his children. The respondent No.1 is the owner of the offending vehicle and the 2$^{nd}$ respondent is the insurance company, and hence they are jointly and severally liable to pay the compensation.

5. With these averments, the claim petition is filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.12,95,552/-.

6. The 1$^{st}$ respondent was the owner of the offending Tractor-Trailor, and after filing of the claim petition, he died, and respondents 3 to 5 were brought on record as his legal representatives. However, no counter affidavit is filed on their behalf.

7. The 2nd respondent is the insurance company. Counter affidavit is filed on its behalf denying the manner of accident pleaded by the claimants, age, avocation and income of the deceased and further stating that the amount claimed is exorbitant, sought for dismissal of the claim petition.

8. Based on the rival pleadings, the Tribunal framed the following issues for consideration:

1. Whether the accident was due to rash and negligent driving of the driver of the vehicle?
2. Whether the petitioners are entitled for compensation as the legal heirs of the deceased, from which of the respondent?
3. To what relief?

9. In support of the case of the claimants, P.Ws.1 and 2 were examined and Exs.A-1 to A-4 were marked.

10. On behalf of the respondents, no evidence either oral or documentary was adduced.

11. Appreciating the evidence on record, the Tribunal held that the deceased has also contributed to the accident and accordingly fixed his liability at 40%, and the liability of the driver of the Tractor-Trailor at 60%. As no documentary evidence was produced by the claimants with regard to the income of the deceased, the Tribunal taking the income of the deceased at Rs.1,000/- per month and after deducting 1/3rd towards personal expenses, arrived at the annual income of the deceased at Rs.8,400/- and by applying the multiplier of 15, granted an amount of Rs.1,26,000/- towards loss of dependency. The Tribunal further awarded an amount of Rs.15,000/- towards non-pecuniary damages, and Rs.15,000/- to the 1st claimant towards loss of consortium, and thus in all, granted an amount of Rs.1,56,600/- with interest at the rate of 9% per annum from the date of the claim petition till the date of realization. And accordingly ordered the insurance company to pay 60% of the said amount as per the apportionment of contributory negligence. Aggrieved by the same, the claimants filed the present appeal.

12. Heard the learned counsel for the claimants and the learned counsel for the 2nd respondent – Insurance Company and perused the material available on record.

13. Having regard to the facts and circumstances of the case and the submissions of the learned counsel, the issue that arises for consideration is, whether the impugned order requires to be interfered with and if so, to what extent?

14. The case of the claimant as noted above is that on 4.4.2000 when the deceased was coming on his scooter near Panthini village, the tractor and trailer AEO 2557/2558 was parked in the middle of the road without any parking lights or indication. The deceased while coming towards Hanamkonda, noticed a lorry in the opposite direction, and as there was no indication, and due to focus of lorry lights, he could not notice the Tractor-Trailor and dashed against the Tractor-Trailor, and received injuries, and died.

15. P.W.2 is the eye witness to the accident. As per his evidence he is a resident of Panthini village and when he was in the village on the main road, talking with his friends, a Tractor – Trailor was parked on the middle of the road without any indications, and a scooter came and dashed against the Tractor – Trailor, due to the lights of the opposite vehicle. In the cross-examination, he stated that the incident happened at 8.30 or 9. P.m. He stated that the tractor was stopped in the middle of the road for want of diesel. He denied the suggestion that he did not witness the incident.

16. The Tribunal discredited his evidence on the ground that though he is an eye witness to the incident, he did not give any complaint and that the incident happened on 4.4.2000 at about 9.00 p.m., but P.W.1 has given complaint on the next day at 8.00 p.m., and that in the inquest report Ex.A-2 in the column No.3, it is noted that P.W.2 has seen the deceased after he has fallen on the road. Therefore, the Tribunal found that his possibility of witnessing the accident cannot be believed. The Tribunal further held that the accident did not happen in the manner in which the claimants narrated, and that

the accident has not occurred totally due to the fault of the driver of the Tractor-Trailor and the deceased has also contributed to the accident.

17. P.W.2 is an eye witness to the incident and there cannot be any dispute, since even in the inquest report, he is referred to as an eye witness. As already noted above, as per his evidence, the accident occurred due to parking of the Tractor-Trailor on the middle of the road without any indications i.e., parking lights or any such indications to prevent accidents. Merely because he has not filed the complaint immediately after the accident and that in the inquest report, it is noted that he has witnessed the deceased after the accident, it cannot be said that his evidence is unbelievable. It is to be noticed that the Insurance Company did not led any rebuttal evidence. It is also to be noticed that the Act, is a beneficial piece of legislation, and strict rules of evidence cannot made applicable. In the present, the admitted fact is that the Tractor-Trailor was parked in the middle of the road without any parking lights or such indications to prevent accident. The accident occurred at about 8.30 to 9.00 p.m., in the dark, near Panthini village, on the Hanamkonda road, and there is no material on record to show that there are any lights near the place of the accident. Therefore due to focus of lorry lights coming in the opposite direction, the deceased dashed the Tractor-Trailor, which is parked in the middle of the road without any parking lights or such indications. Hence, there is no justification on the part of the Tribunal in fixing the contributory negligence on the part of the deceased at 40%. Having regard to the facts and circumstances, the finding of the Tribunal in this regard is set aside, and the driver of the Tractor-Tractor is found totally responsible for the accident.

18. Coming to the income of the deceased, in the claim petition it is stated that the deceased is aged 40 years, and he is an employee of A.P.Civil Supplies Corporation and earning an amount of Rs.6,581/-. But the claimants have not produced any documentary evidence in this regard. The Tribunal has taken the income of the deceased as Rs.1,000/- per month, which is very meager. The Apex Court in thedecision reported in ***RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE***

***INSURANCE COMPANY LIMITED***[1] has taken the monthly income of a daily wager at Rs.4,500/-. In view of the same, an amount of Rs.4,500/- can be taken as monthly income of the deceased. The monthly income of the deceased taken by the Tribunal is accordingly modified.

19. As per the claim petition, and the evidence on record, the deceased is aged 40 years. As per the judgment of Apex Court in ***NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI***[2], an addition of 30% of the established income shall be made towards future prospect. 30% of Rs.4,500/- would come to Rs.1,350/-. Thus the total monthly amount, including future prospects, would come to Rs.5,850/- (Rs.4,500/- + Rs.1,350/- = Rs.5,850/-).

20. The Apex Court in ***SARLA VERMA vs. DELHI TRANSPORT CORPORATION***[3], held that where the number of dependent family members of the deceased are 4 to 6, the deduction towards personal and living expenses, shall be at the rate of $1/4^{th}$. In the present case, the claimants, who are the dependents of the deceased, are four in number. Therefore, the deductions towards personal and living expenses from out of the income of the deceased, shall be $1/4^{th}$. Accordingly, if $1/4^{th}$ is deducted from Rs.5,850/-, which is the monthly income arrived at by this court, the amount that the deceased would be contributing to his family will come to Rs.4,388/- per month, and the annual income comes to Rs.52,656/-.

21. For the age group of deceased, who is 40, the appropriate multiplier as per column No.4 of the table given in the judgment of the Apex Court in SarlaVerma (supra), is ‘15’. Thus, the claimants are entitled to an amount of Rs.7,89,840/- (Rs.52,656/- x 15 multiplier = Rs.7,89,840/-) towards loss of dependency.

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[1]AIR 2011 SC 2951
[2]AIR 2017 SC 5157
[3](2009)6 SCC 121

22. As per the judgment of the Apex Court in PranaySethi's case (supra), the claimants are entitled to Rs.77,000/- towards conventional heads.

23. Thus, the claimants are granted an amount of Rs.8,66,840/- (Rs.7,89,840/- + Rs.77,000/- = Rs.8,66,840/-)

24. The insured and the insurer of the crime vehicle ie., Tractor-Trailor bearing No. AEO 2557 / 2558 are jointly and severally liable to pay the compensation.

25. The claimants are entitled to the enhanced amount of compensation with interest at the rate of 6% per annum from the date of the appeal till the date of realization.

26. It is made clear that as the appeal is filed with a delay of 2787 days, the claimants are not entitled to any interest for the delay period.

27. The order of the Tribunal with regard to apportionment of compensation among the claimants, and the with regard to deposit and withdrawal is confirmed.

28. The appeal is accordingly allowed in part to the extent indicated above.

29. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

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**M.G.PRIYADARSINI,J**

DATE:19—09—2022

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