

THE HON'BLE DR. JUSTICE D.NAGARJUN

M.A.C.M.A. No.3247 of 2009

JUDGMENT:

This appeal is filed aggrieved by the common order dated 28.02.2005 passed by the learned Principal Motor Accidents Claims Tribunal (Principal District Court) at Warangal (for short, "the Tribunal") in MVOP.Nos.8 and 9 of 2004. The present appeal is arising out of MVOP.No.9 of 2004.

2. The facts in brief are that on 02.03.2003 when the deceased persons were sleeping near the old grain market, Warangal on the road, the driver of the lorry bearing No.AP 12U 1872 drove the lorry in rash and negligent manner in reverse direction as a result of which the lorry was driven over the deceased persons, thereby they died on the spot.

3. MVOP.No.8 of 2004 is filed by the father of the deceased, whereas, the petitioners in MVOP.No.9 of 2004 are the husband and mother of the deceased. While discussing issue No.1, the learned Tribunal has found that the driver of the lorry bearing No.AP 12U 1872 drove the lorry in rash and negligent manner, thereby the accident took place. In respect of issue No.2 so far as MVOP.No.9 of 2004 is concerned, the claimants have sought

for compensation of Rs.4,50,000/-, as the deceased was 25 years old and was earning Rs.4,000/- per month as labourer.

4. It is observed by the learned Tribunal that no proof was filed by the claimants to show that the deceased was earning Rs.4,000/- thereby the learned Tribunal concluded that the income of the deceased was Rs.900/- per month and the contribution to the family was fixed at Rs.500/-, thereby the annual income was calculated at Rs.6,000/- and applied 17 multiplier by considering the age of the deceased as 25 years and thereby the loss of dependency was calculated for Rs.1,02,000/-. An amount of Rs.15,000/- was awarded as non-pecuniary damages and Rs.15,000/- was awarded for loss of consortium, thereby in all an amount of Rs.1,32,000/- was granted.

5. Aggrieved by the said award, the present appeal is filed alleging that fixing of Rs.900 per month is not proper, as the deceased was a worker of sharpening of knives and seisors and was earning Rs.150/- per day and sought for fixing the income at Rs.4,000/- per month.

6. Heard both sides and perused the record.

7. Now, the point for determination is whether the award passed by the learned Tribunal can be enhanced?

8. The learned Tribunal while considering issue No.2 has come to a conclusion that though the deceased was stated to be earning Rs.4,000/- per month, as there was no satisfactory evidence, an amount of Rs.900/- per month was considered. The learned Tribunal has not given any reasons as to how and why Rs.900/- per month was fixed. It appears, the income of the deceased was approximately fixed by the Tribunal.

9. Now, it is settled legal proposition that for every unskilled labour where the evidence could not be produced, the minimum amount of earnings that can be taken is Rs.4,500/- per month. It can certainly be increased in case if there is any satisfactory evidence. Learned Tribunal while observing that the petitioners have failed to produce any evidence to show that the deceased was earning Rs.4,000/- per month, considering the circumstances, granted Rs.900/- per month instead of Rs.4,500/- per month. Hence, the finding of the learned Tribunal is modified to Rs.4,500/- per month.

10. It is submitted by the respondent/insurance company that the Tribunal has incorrectly taken the multiplier as 17

instead of 18. However, a perusal of the record, it is clear that the multiplier 17 applied by the Tribunal is incorrect. As per the decision of the Supreme Court in **Sarla Varma and others vs. Delhi Transport Corporation and another**¹, the multiplier for the age group 21 to 25 is 18. Therefore, multiplier 18 has to be applied instead of 17.

11. The Tribunal has also granted an amount of Rs.15,000/- towards loss of estate, love and affection, transportation and funeral expenses. As per the judgment delivered by the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd vs. Pranay Sethi**² the amount that can be covered towards funeral expenses, loss of estate and consortium is Rs.70,000/-. Therefore, the said amount of Rs.70,000/- is granted instead of Rs.15,000/-.

12. Further, the deceased was married and the claimants are the dependants. The Tribunal has deducted Rs.500/- randomly towards the contribution of the deceased to family. As per **Sarla Varma case (supra)**, one-third of the income of the deceased has to be deducted towards personal and living expenses where the dependants are two or three persons. In the case on hand,

¹ (2009) 6 SCC 121

² (2017) 16 SCC 680

since the claimants are two, this Court is of the opinion that the contribution of the deceased towards his personal and living expenses has to be taken as one-third and the remaining two-thirds have to be taken towards contribution to the family.

13. Considering the facts and circumstances of the case, this Court is of the opinion that the Tribunal was very conservative in awarding compensation. Therefore, the compensation awarded by the Tribunal is enhanced as under:

1. The income of the deceased taken by the Tribunal at Rs.900/- per month has been enhanced to Rs.4,500/- per month and as such the loss of earnings of the deceased would come to Rs.9,72,000/- (Rs.4,500 x 12 x 18). Similarly, since the Tribunal has taken Rs.400/- per month randomly towards the personal and living expenses of the deceased, this Court is of the opinion that one-third should be deducted towards personal and living expenses of the deceased which comes to Rs.3,24,000/- and the net loss of earnings would work out to Rs.6,48,000/-.
2. In respect of loss of estate, love and affection, transportation charges and funeral expenses the amount of Rs.15,000/- awarded by the Tribunal is enhanced to Rs.70,000/- (Rupees Seventy thousand only).
3. In all the appellants/claimants are entitled to the total compensation of Rs.7,18,000/- (Rupees Seven lakhs

eighteen thousands) instead of Rs.1,32,000/- awarded by the Tribunal. So far as the rate of interest awarded by the Tribunal is concerned, the same remains as it is.

14. With the above, the appeal is allowed in part.

Miscellaneous applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 14.10.2022
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