THE HON'BLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 220 of 2016

JUDGMENT:

Being not satisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil court, Hyderabad (for short, the Tribunal) in O.P.No.1586 of 2014, dated 28.10.2015, the appellants/petitioners preferred the present appeal seeking enhancement of the compensation.

2. The facts in issue are under:

3. The appellants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.15,00,000/- on account of the death of M.Shankar, S/o M. Murali in a motor accident occurred on 07.03.2014 at about 9.00.p.m., near Pothireddipally X roads, N.H.No.65, Sangareddy Mandal, Medak District. According to the appellants, while the deceased was going by walk near Pothireddypally cross roads, one Bus bearing No. AP 29 V 1078 which was going from Hyderabad towards Zaheerabad in a rash and negligent manner with high speed dashed the deceased M.Shankar. As a result, the deceased fell down and sustained grievous

injuries on head and all over the body. Immediately, the deceased was shifted to Government Hospital, Sangareddy by 108-ambulance. While undergoing treatment, he died on 09.03.2014. According to the petitioners the deceased was aged 35 years, hale and healthy and was working as stone cutter and marble polish worker and was earning Rs.15,000/- per month and he would have earned more in the future. Every year 30% hike was there in his earnings. Therefore, they laid the claim against respondents for Rs.15,00,000/- towards compensation under different heads.

4. Before the tribunal, while the respondent No.1 remained exparte, the respondent No.2, insurance company, resisted the claim by filing counter and denying the manner of accident, age, avocation, health and future prospects of the deceased. The respondent No.2 has not received any report under Section 158(6) of M.V. Act and respondent No.1 has violated section 134-C of M.V act. It is also contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

5. After considering the claim, counter and the evidence, both oral and documentary brought on record, the tribunal has allowed the O.P. in part awarding a sum of Rs.6,00,000/- with proportionate costs and interest @12% per annum from date of petition till the date of decree and thereafter @6% per annum from the date of decree till payment directing the respondent Nos.1 and 2 to pay the same. Seeking further enhancement of compensation, the claimant approached this Court with the present appeal.

6. The only contention of the learned counsel for the appellants is that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1], the tribunal ought to have added future prospects at 40% to the established income of the deceased. Therefore, it is argued that the income of the deceased may be taken into consideration reasonably for assessing loss of dependency by adding future prospects and prayed to enhance the compensation.

[1] 2017 ACJ 2700

7. Per contra, the learned Standing Counsel for the Insurance Company submits that the tribunal has rightly assessed the income of the deceased and has rightly awarded the compensation which needs no interference by this Court.

8. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

9. The short question that arises for consideration is "*whether the compensation awarded by the Tribunal is just and equitable"?*

10. According to the petitioners the deceased was aged 35 years and was working as stone cutter and marble polish worker and was earning Rs.15,000/- per month. However, there is no clear evidence with regard to the earnings of the deceased. Therefore, the monthly income of the deceased is taken as Rs.6,000/- per month.

11. Coming to the aspect of future prospects, this point has already been considered by the Apex Court in ***Pranay Sethi*** (Supra), and it has been held that the benefit of future prospects cannot be denied to a self-employed person. The Apex Court has

further held that where the deceased was below the age of 40 years, an addition of 40% of the established income; where the deceased was between 40 to 50 years, an addition of 25% of the established income; and where the deceased was between 50 to 60 years, an addition of 10%, should be granted towards future prospects. According to the petitioners, since the age of deceased, at the time of death, was 35 years, an addition of 40% of the established income should be granted. The monthly income of the deceased is taken as Rs.6,000/-. Thus, by adding 40% to the income of the deceased, the future monthly income comes to Rs.8,400 /- (Rs.6000/- + Rs.2,400/- being 40% thereto). Since the deceased was a married person and the number of dependants are two, after deducting 1/3rd there from towards personal expenses of the deceased, the net monthly contribution to the family comes to Rs.5,600/-, the annual contribution comes to Rs.67,200/-.

12. After considering the evidence available on record, the Tribunal has held that the deceased was aged about 35 years at the time of the accident. In view of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***[2]**,** the suitable multiplier would be '16'. Applying multiplier '16', the total loss of dependency would be Rs.10,75,200/- (Rs.67,200/- x 16). As per

[2] 2009 ACJ 1298 (SC)

the decision of the ***Pranay Sethi*** (supra), the claimants are entitled to Rs.77,000/- under the conventional heads. The total compensation would come to Rs.11,52,200/-Apart from that, as per the decision of the Apex Court in Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others, the claimant No.2 being the son of the deceased, is granted parental consortium of Rs.40,000/-. Thus, in all, the appellants are granted the compensation of Rs.11,92,200/-.

13. In the result, the appeal is allowed in part by enhancing the compensation from Rs.6,00,000/- to Rs.11,92,200/-. The enhanced amount shall carry interest at 7.5% per annum from the date of order passed by the tribunal till the date of realization. The enhanced amount shall be apportioned among the claimants in the same proportion as was ordered by the tribunal. However, the claimants are directed to pay deficit court fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

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