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

MA.CMA.NO.2493 OF 2015

JUDGMENT

Not being satisfied with the compensation granted by the court of the Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge at Warangal, the claimants filed the present appeal seeking enhancement of compensation.

2. Claimant No.1 is the wife and claimants 2 and 3 are the sons of the deceased Muddasani Mallaiah.

3. The case of the claimants is that on 30.3.2007 while the deceased and his friend were traveling on two wheeler LML Vespa scooter bearing No.AP 36 D 7723 and were proceeding towards Hanamkonda Chowrastha from Collector's Office, and that when they reached in front of Heeralal Sweet House, and were proceeding on the left side of the road, auto bearing No. AP 36 V 0511 proceeding in the same direction, driven by its driver in a rash and negligent manner, and in an attempt to over take the scooter, dashed the scooter from backside. As a result, deceased and his friend fell down from the scooter, and the deceased received head injury and injuries all over the body. The deceased was taken to MGM Hospital in 108 ambulance, where he died

on 5.4.2007 while undergoing treatment. Case in Cr.No.116/2007 under Sections 337 and 279 of IPC was registered.

4. The case of the claimants is that the deceased was aged 40 years and prior to the accident, he was hale and healthy and was running a tea stall and was earning an amount of Rs.4,000/- per month and was contributing the entire earnings to the family and due to the sudden death of the deceased, who is their breadwinner, they lost the source of income and are facing severe hardship, and hence filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.6,00,000/-.

5. The owner of the crime auto remained ex parte, and the 2nd respondent – insurance company filed counter affidavit and stated that the cheque given by the insured was dishonoured by the bank and hence no insurance policy was subsisting as on the date of the accident, and it is not liable to pay any compensation, and further denying the age, avocation and income of the deceased and the manner of accident pleaded by the claimants, and also contending that the driver of the crime auto was not having any valid driving licence, sought for dismissal of the claim petition.

6. The Tribunal considering the evidence of record and as no rebuttal evidence was led by insurance company, held that the accident occurred due to rash and negligent driving of the crime auto.

7. With regard to liability, the insurance company, though denied liability, failed to file any evidence to show that there was any intimation to the 1st respondent – insured with regard to cancellation of policy and further considering the report given by Motor Vehicle Inspector, which shows that the vehicle was inspected on 3.5.2007 at 12.00 p.m. and the vehicle has insurance coverage by ICIC Lombard through cover note No.51175835, and further relying on the judgment of Apex Court reported in UNITED INDIA INSURANCE COMPANY LTD. Vs. LAXMAMMA[1], the Tribunal held that insurance company cannot avoid its liability.

8. Coming to quantum, the Tribunal taking the income of the deceased as Rs.4,000/- per month, and by deducting 1/3rd towards personal expenses, and further, as the deceased was found to be 50 years as on the date of accident as per post mortem certificate, the multiplier of 13 was applied and accordingly loss of income was granted at Rs.4,16,000/-. The Tribunal also granted an amount of Rs.50,000/- towards loss of consortium, Rs.10,000/- towards funeral expenses and

[1] 2012(4) ALD 165(SC)

thus in all granted an amount of Rs.4,76,000/- and respondents 1 and 2 were made jointly and severally liable to pay the amount.

9. As stated above, seeking enhancement of compensation, the claimants field the present appeal.

10. Heard Sri Ajay Kumar Maddisetty, learned counsel for the claimants and Sri Kota Subba Rao, learned counsel for the 2nd respondent – insurance company.

11. With regard to the income of the deceased, it is to be seen that the Apex Court in the decision reported in ***RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED***[2] has taken the monthly income of a daily wager at Rs.4,500/-. In the present case, the case of the claimants is that he is tea seller and was earning an amount of Rs.4,000/- per month. Having regard to the judgment of the Apex Court, I am inclined to take the monthly income of the deceased as Rs.4,500/- per month.

12. As per the judgment of Apex Court in ***NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI***[3], an addition of 25% of the established income shall be made towards future prospect. 25% of Rs.4,500/- would come to 1,125/-.Thus the total monthly income

[2]AIR 2011 SC 2951
[3]AIR 2017 SC 5157

of the deceased including future prospects, would come to Rs.5,625/- (Rs.4,500/- + Rs.1,125/- = Rs.5,625/-)

13. The number of dependants of the deceased is '3' and hence 1/3 is to be deduced towards personal expenses. If 1/3 is deducted from Rs.5,625/- the amount that the deceased would be contributing to his family comes to Rs.3,750/- per month and Rs.45,000/- per annum.

14. The case of the claimants is that the deceased was aged 40 years as on the date of accident. In Exs.A-1 and A-2, which are complaint and inquest report, the age of the deceased is shown as 40 years, and whereas in postmortem report, the age of the deceased is shown as 50 years. In view of this discrepancy, I am inclined to take the average age of the deceased as 45 years. The appropriate multiplier to the age of the deceased is ' 14'. Thus, the claimants would be entitled to Rs.6,30,000/- (Rs.45,000/- x 14 = 6,30,000/-) towards loss of income.

15. As per the judgment of the Apex Court in Pranaysethi's case (supra), the claimants are entitled to Rs.77,000/- towards conventional heads. Thus the amount of Rs.50,000/- granted by the Tribunal to the 1st claimant towards loss of consortium and Rs.10,000/- towards funeral charges, are accordingly modified i.e., under the conventional head, as stated above, they are entitled to Rs.77,000/-.

16. Thus, in all, the claimants are entitled to Rs.7,07,000/- (Rs.6,30,000/- + Rs.77,000/-).

17. The amount of Rs.4,76,000/- granted by the Tribunal is enhanced to Rs.7,07,000/-. The rate of interest granted by the Tribunal at 6% is enhanced to 7.5%. Thus the claimants are entitled to interest on the compensation amount at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realisation. The respondents 1 and 2 are jointly and severally liable to pay the compensation.

18. The claimant shall pay the deficit court fee and any amount already deposited by the insurance company shall be given credit to.

19. The apportionment of compensation and mode of deposit in nationalized bank and the withdrawal of the amount shall be as per the direction of the Tribunal.

20. The appeal is accordingly allowed in part.

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

M.G.PRIYADARSINI,J

DATE:30—08—2022
AVS