THE HON'BLE JUSTICE G. SRI DEVI

AND

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

M.A.C.M.A.Nos.4247 of 2014 and 908 of 2015

COMMON JUDGMENT: (Per Hon'ble Justice G. Sridevi)

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.4247 of 2014 filed by the Reliance General Insurance Company Limited and M.A.C.M.A.No.908 of 2015 filed by the petitioners seeking enhancement of the compensation, are directed against the very same order and decree, dated 04.06.2014 in O.P.No.63 of 2011 on the file of the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal").

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the petitioners, who are the parents and siblings of one Hari Shankar Brahma (hereinafter referred to as "the deceased"), filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.60,00,000/- for the death of the deceased, who died in a motor vehicle accident, that occurred on 28.06.2009. It is

stated that on 28.06.2009 while the deceased and his friend, D.Ravi Kumar, were proceeding on Motor cycle bearing No.AP 24 R 9685 from Suryapet to Nakrekal and when they reached the outskirts of Inupamula Village, one Lorry bearing No.AP 11 X 7899 came in opposite direction in wrong side being driven by its driver in a rash and negligent manner at high speed and dashed the motorcycle and thereafter dashed to a road side tree, due to which the deceased and his friend died on the spot. It is also stated that the deceased was hale and healthy and was working as System Analyst in Nihaki Systems Inc. New Jersy, U.S.A. and he was being paid $47,050 dollars per annum which is equivalent to Rs.21,17,250/- and due to sudden demise of the deceased, the petitioners lost their source of income. As the accident occurred due to rash and negligent driving of the driver of the Lorry, the petitioners filed the claim-petition against the respondents 1 and 2, who are the owner and insurer of the aforesaid Lorry, respectively.

4. Before the Tribunal, the first respondent remained *ex parte.* The second respondent filed counter denying the averments made in the claim-petition including the manner in

which the accident occurred, age, avocation and income of the deceased. It is specifically contended that the deceased as well as the driver of the lorry were not having valid driving licence at the time of the accident. It is further contended that the claim-petition is not maintainable for non-joinder of necessary parties i.e., owner and insurer of the motorcycle. Lastly, it is contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

5. Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the pleaded accident dated 28.06.2009 was occurred due to the rash and negligent driving of the driver of crime vehicle i.e., Lorry bearing No.AP 11 X 7899 and whether the deceased Tharonoju Hari Shanikar Brahma died due to the said accident?
2. Whether the petitioners are entitled for compensation? If so, to what extent and from whom?
3. To what relief?

6. On behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A12 and Exs.X1 and X2 were marked. On behalf of

the respondents, no oral documentary evidence was adduced but Ex.B1-copy of Insurance Policy was marked.

7. After considering the oral and documentary evidence available on record, the Tribunal held that the accident was occurred due to the rash and negligent driving of the driver of the Lorry and accordingly awarded an amount of Rs.60,00,000/- with interest @ 7.5% per annum from the date of petition till the date of realization to be paid by the respondents 1 and 2 jointly and severally. Challenging the same, the present appeals came to be filed by the 2nd respondent-Insurance Company and the petitioners respectively.

8. Heard both sides and perused the record.

9. The learned Counsel for the petitioners has contended that the Tribunal erred in adopting multiplier '5' instead of '17' as the deceased was aged about 27 years at the time of the accident. It is further submitted that the Tribunal having come to the conclusion that the petitioners are entitled to the total compensation of Rs.63,61,750/- ought not to have restricted the same to Rs.60,00,000/- merely because the claim made in the

O.P. was Rs.60,00,000/-. He further submits that even though the petitioners sought meager amount, it is the duty of the Tribunal to grant just compensation over and above the claimed amount, if they are entitled to and in the light of the judgment of the Apex Court in *Nagappa v. Gurudayal Singh*[1] the petitioners are entitled to more compensation and prayed to enhance the same.

10. The contention of the learned Standing Counsel appearing for respondent No.2-Insurance Company is that as the Tribunal granted the total amount claimed by the petitioners, the petitioners cannot be said to be the aggrieved persons within the meaning of Section 173 of the Motor Vehicles Act and hence, they cannot challenge the order of the Tribunal in the present appeal. It is also submitted that since the accident was on account of head on collision between the two vehicles that were coming from opposite direction, both the drivers are equally responsible for the accident and therefore, the Tribunal ought to have fixed contributory negligence as well on the part of the rider of the motorcycle i.e., deceased. It is further submitted

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[1] (2003) 2 SCC 274

that since the income of the deceased as claimed by the petitioners was Rs.21,17,250/- per annum, the Tribunal ought to have deducted 30% towards income tax. It is further submitted that since the deceased was bachelor, the Tribunal ought to have deducted 50% of the income towards personal expenses of the deceased, but erroneously deducted only 40% and therefore, prayed to reduce the compensation.

11. A perusal of the impugned award would show that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Lorry by its driver, to which the Tribunal after considering the evidence of P.W.2 coupled with Exs.A1 and A4, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Lorry and has answered in favour of the petitioners and against the respondents. Therefore, we see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the Lorry.

12. Insofar as the quantum of compensation is concerned, admittedly, the deceased was working as System Analyst in

Nihaki Systems Private Limited, New Jersey, U.S.A., and was earning Rs.21,17,250/- per annum as seen from Ex.A7. Ex.A6 is the letter issued by Nihaki Systems Private Limited, which shows that the deceased was given appointment in the said organization from 01.10.2007 to 23.09.2010. To prove Exs.A6 and A7, P.W.3, the employer, was examined. However, the fact remains that the employment of the deceased with Nihaki Systems Private Limited was on contract basis for a period of three years. It is not out of place to mention that the cost of living in the western countries would normally be higher. In *Oriental Insurance Company Limited v. DEO Patodi and others*[2], in similar circumstances, considering the fact that the deceased was employed in U.K., the Apex Court has observed that to award fair compensation, one third of the amount that was being received by the deceased should be taken into consideration. Therefore, basing on Ex.A7, and considering the fact that the deceased was employed on contract basis, this Court is inclined to fix the annual income of the deceased at Rs.7,00,000/- (being 1/3rd of Rs.21,00,000/-). Apart from the

[2] (2009) 13 SCC 123

same, the petitioners are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others*[3] as the deceased was B.Tech graduate. Therefore, his annual future income would be Rs.9,80,000/- (Rs.7,00,000/- + Rs.2,80,000/-). As the deceased was un-married, after deducting 50% therefrom towards his personal expenses, the annual contribution to the family comes to Rs.4,90,000/-. In view of the decision of the Apex Court in *Munna Lal Jain v. Vipin Kumar Sharma and others*[4] when the deceased was a bachelor, the age of the deceased has to be considered while determining the multiplier. Since the deceased was 27 years at the time of accident, the appropriate multiplier would be '17' as per the decision reported in *Sarla Verma v. Delhi Transport Corporation and another*[5]. Adopting multiplier 17, the total loss of dependency comes to Rs.4,90,000/- x 17 = Rs.83,30,000/-. The petitioners are also entitled to Rs.33,000/- towards loss of estate and funeral

[3] 2017 ACJ 2700
[4] 2015 (6) SCC 347
[5] (2009) 6 SCC 121

expenses, as per **Pranay Sethi**'s case (supra). Thus, in all the petitioners are entitled to Rs.83,63,000/-.

13. Further, under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only upto the amount claimed by the petitioners. In an appropriate case, where from the evidence brought on record, if Tribunal/Court considers that petitioners are entitled to get more compensation than claimed, the Tribunal may pass such award. Thus, the approach of the learned Tribunal in determining compensation only on the basis of amount of compensation claimed in the claim-petition and not appreciating the evidence led by the petitioners is incorrect. Further, as per the decision of the Apex Court in *Nagappa v. Gurudayal Singh and others* (supra), there is no restriction for the Tribunal/Court in awarding compensation amount exceeding the claimed amount. Further, in appropriate cases, the Court may permit amendment to the claim-petition.

14. In the instant case, the petitioners filed I.A.No.2 of 2015 seeking permission to amend the claim amount from

Rs.60,00,000/- to Rs.2,73,50,000/- for the purpose of enhancement. In *Ramla and others v. National Insurance Company Limited and others*[6] the Apex Court held that there is no restriction in awarding compensation amount exceeding the claimed amount, since, the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award 'just compensation'. The Motor Vehicles Act is the beneficial and welfare legislation. A 'just compensation' is one which is reasonable on the basis of the evidence produced on record. Having regard to the law laid down by the Apex Court referred to above, this Court is of the opinion that the petitioners are entitled to the compensation arrived at by the Tribunal and there is no need to pass any specific orders in I.A.No.2 of 2015.

15. Accordingly, the amount awarded by the Tribunal is hereby enhanced from Rs.60,00,000/- to Rs. 83,63,000/-. The enhanced amount shall carry interest of 7.5% p.a. from the date of passing of award passed by the Tribunal till the date of realization. The Insurance Company is directed to deposit the

[6] (2019) 2 SCC 192

said enhanced compensation amount within two months from the date of receipt of a copy of this judgment. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. However, the petitioners are directed to pay the deficit court fee on the enhanced amount.

16. Both the appeals are partly allowed as indicated above. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

G. SRI DEVI, J

SMT. M.G.PRIYADARSINI, J

19.09.2022
Tsr/gkv

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