THE HON'BLE JUSTICE G. SRI DEVI

AND

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

M.A.C.M.A.No.1602 of 2016

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

This appeal is filed under Section 173 of Motor Vehicles Act, aggrieved by the award and decree, dated 27.03.2015 passed in M.V.O.P.No.96 of 2014 on the file of the XXVII Additional Chief Judge-cum-Chairman, Motor Vehicle Accident Claims Tribunal, City Civil Court, Secunderabad (for short "the Tribunal").

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

3. Brief facts of the case are that the petitioners filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.40,00,000/- for the death of one M.Yadagiri (hereinafter referred to as "the deceased"), who died in a motor vehicle accident. It is stated that on 03.01.2014 while the deceased was proceeding from Sherilingampally towards Hyderabad on his Scooter bearing No.AP 11 E 1651 and when he reached in front of Sherilingampally Municipal Office, one Indica Car bearing No.AP 28 TV 4543 driven by its driver in a rash and negligent manner at high speed and dashed the deceased from his behind, due to which the deceased

fell down and sustained injuries. Immediately after the accident, the deceased was shifted to Himagiri Hospital, Gachibowli for treatment and thereafter he was shifted to Apollo Hospital, Hyderabad, where he succumbed to injuries while undergoing treatment on 06.01.2014. It is also stated that prior to the accident, the deceased was hale and healthy and was working as Dafedar in the office of Directorate of Insurance, Government of Andhra Pradesh, Hyderabad and earning Rs.33,355/- per month apart from other expenses and due to sudden demise of the deceased, the petitioners lost their source of income. The 1st respondent is the owner and the 2nd respondent is the Insurer of the offending vehicle, are jointly and severally liable to pay the compensation.

4. Considering the claim and the counter filed by the 2nd respondent, appellant herein, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. and awarded compensation of Rs.41,27,466/- with interest at 7.5% per annum. Challenging the same, the present appeal has been filed by the Insurance Company.

5. Heard and perused the record.

6. Learned Standing Counsel appearing for the appellant-Insurance Company is contended that there was contributory negligence on the part of the deceased and that there was no negligence on the part of the driver of the Car. It is further submitted that the Tribunal erred in not deducting income tax and other standard deductions from the salary of the deceased and that the Tribunal also erred in awarding Rs.3,25,000/- towards loss of consortium, loss of estate and love and affection and funeral expenses but in view of the law laid down by the Apex Court, the petitioners are entitled to only Rs.77,000/- under conventional heads, therefore, the same may be reduced to Rs.77,000/-.

7. Learned Counsel appearing for the petitioners would submit that the Tribunal has rightly awarded just compensation which needs no interference.

8. A perusal of the impugned judgment would show that the Tribunal has framed Issue No.1 as to whether the accident occurred on account of rash and negligent driving of Car bearing No.AP 28 TV 4543, to which the Tribunal after considering the evidence of P.W.3 coupled with Ex.A1-F.I.R. and Ex.A2-charge sheet, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Car and has answered in favour

of the claimants and against the respondents. Further, the appellant-Insurance Company has neither taken any specific plea in the counter nor has taken any steps to prove that there was any contributory negligence on the part of the deceased. 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 Car.

9. Insofar as the quantum of compensation is concerned, after considering the age and avocation of the deceased, the Tribunal has rightly taken the income of the deceased at Rs.33,355/- per month. The annual income of the deceased comes to Rs.4,00,260/-. As regards the contention of the learned Standing Counsel for the appellant that the Tribunal erred in not deducting income tax and other standard deductions from the salary of the deceased, in the light of the decision of the Apex Court in *Sarla Verma and others v. Delhi Transport Corporation and another*[1] wherein the Apex Court held that "where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax', the Tribunal ought to have deducted Rs.24,000/- towards income tax and Rs.350/- towards professional tax from out of the annual income of the deceased. After deducting income tax and professional tax, the

[1] (2009) 6 SCC 121

annual income of the deceased would be Rs.3,75,910/-. Apart from the same, the petitioners are entitled to addition of 15% towards future prospects, as per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others*[2]*,0* Therefore, the annual income of the deceased comes to Rs.4,32,296/- (Rs.3,75,910/- + Rs.56,386/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation* (supra) as the dependants are five in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.3,24,222/- per annum. As per Ex.A5-P.M.E. Report, the deceased was aged about 54 years at the time of the accident. As per the decision reported in *Sarla Verma v. Delhi Transport Corporation* (supra) the appropriate multiplier is '11'. Adopting multiplier '11', the total loss of dependency would be Rs.3,24,222/- x 11 = Rs.35,66,442/-. As per the law laid down by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others* (supra) the petitioners are entitled to only Rs.77,000/- towards loss of consortium, loss of estate and funeral expenses, therefore, the amount of Rs.3,25,000/- awarded by the Tribunal towards consortium, loss of love and affection, loss of estate

[2] 2017 ACJ 2700

and funeral expenses is hereby reduced to Rs.77,000/- only. The record reveals that immediately after the accident, the deceased was shifted to Himagiri Hospital, Gachibowli and thereafter shifted to Apollo Hospital, Hyderabad and after his death the dead body was shifted to his house situated at Secunderabad, the Tribunal has rightly awarded Rs.5,000/- towards transportation charges. Thus, the compensation amount of Rs.41,27,466/- awarded by the Tribunal is hereby reduced Rs.36,48,442/-.

10. Accordingly, the M.A.C.M.A. is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.41,27,466/- to Rs.36,48,442/-. 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

06.09.2022
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