THE HON'BLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 2398 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-XVIII Additional Chief Judge Cum IV Additional Metropolitan Sessions Judge, Hyderabad (for short, the Tribunal) in O.P.No.1998 of 2009, dated 06.01.2013, the appellants/petitioners preferred the present appeal seeking enhancement of the compensation.

2. The facts in issue are under:

The appellants filed a petition under Section 166 and 163(A) of the Motor Vehicles Act, 1988 claiming compensation of Rs.12,00,000/-. Originally the petition was filed by the injured S.Veeresham S/o.Bourancha (hereinafter referred as 'the deceased') and subsequently he died and therefore his wife and mother came on record as his legal representatives. According to the claimants, on 26.07.2009 at about 06:30 PM, the deceased was going by walk from the side of the National Highway No.9. When he reached near Kavalampet bus stand, one Maruti Car bearing No.KA-04-MF 4704 came in a wrong side being driven in a rash and negligent manner, dashed the deceased. As a result, he fell down and sustained fracture of left tibia, injuries on head and spinal cord and other injuries all over the body and was initially admitted in area Hospital, Sangareddy. From there he was shifted to Gandhi Hospital, Secunderabad. There, external fixators were fixed to his left leg and spinal cord surgery was conducted. He had spent over Rs.50,000/- towards medical expenses and advised extra nourished food besides physiotherapy. Despite spending huge amounts, the deceased Veeresham could not survive and succumbed to the injuries while being treated on 06.01.2010. Pursuant to his death, his widow and his mother who are the only surviving heirs were brought on record by virtue of orders passed in I.A. No.1637 of 2010 dated 17.06.2010 by the Court below.

3. Respondent No.1 is the owner and the Respondent No.2 is the insurer of the crime vehicle.

4. Before the tribunal, while the respondent No.1 remained ex parte, the respondent No.2, insurance company, resisted the claim by filing counter and denying the manner of accident, age and income of the deceased . The ownership of respondent No.1 over the offending vehicle and its alleged insurances by respondent No.1 were denied. It is also contended that the driver of the offending car did not have any valid and effective driving license and

therefore the police filed charge sheet against him under Section 181 of Motor vehicles Act and respondent No.1 knowingly handed over the vehicle to the driver who did not have valid license and it was the sheer negligence of the petitioner himself that resulted in the accident as he failed to take precautions and follow the traffic rules. Hence, the respondent No.2 is not liable to pay any compensation. 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.11,20,000/- with interest @7% in favour of petitioners against respondent Nos.1 and 2, from the date of petition till the date of realization. Seeking further enhancement of compensation, the claimants 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.

7. Per contra, the learned Standing Counsel for the Insurance Company submits that the tribunal 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. So far as income of the deceased is concerned, the tribunal has rightly fixed the monthly income of the deceased at Rs.7,000/-.

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

[1] 2017 ACJ 2700

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. As per the Ex.A-7 the age of deceased was 25 years, at the time of accident, an addition of 40% of the established income should be granted. Thus, by adding 40% to the income of the deceased, the future monthly income comes to Rs.9,800/- (Rs.7,000/- + Rs.2,800/- being 40% thereto). Since the number of dependants are two, after deducting 1/3rd therefrom towards personal expenses of the deceased, the net monthly contribution to the family comes to Rs.6,533/- and the annual contribution comes to Rs.78,400/-(Rs.6,533/- X 12).

12. Since the deceased was aged about 25 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 '18'. Applying multiplier '18', the total loss of dependency would be Rs.14,11,200/- (Rs.78,400/-x 18). That apart, as per the decision of the ***Pranay Sethi*** (supra), the claimants are entitled to Rs.77,000/- under the conventional heads. Thus, the

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[2] 2009 ACJ 1298 (SC)

claimants are entitled for the total compensation of Rs.14,88,200/-.

13. In the result, the appeal is allowed by enhancing the compensation from Rs.11,20,000/- to Rs.14,88,200/-. 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 given to the petitioner No.1. However, the claimants are directed to pay deficit court fee on the enhanced amount. Time for deposit of the amount is two months. On such deposit, the claimants are permitted to withdraw the said amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

14.12.2022
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