

HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A.Nos.1664 and 2196 of 2015

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.1664 of 2015 filed by the claimants seeking enhancement of compensation and M.A.C.M.A.No.2196 of 2015 filed by the Oriental Insurance Company Limited, are directed against the very same order and decree, dated 03.06.2015, passed in O.P.No.751 of 2012 on the file of the Chairman, Motor Accidents Claims Tribunal (District Judge), Nizamabad (for short “the Tribunal”).

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

The claimants, who are the wife, children and mother of one Katikonda Raju (hereinafter referred to as “the deceased”), filed a petition under Section 163-A of the Motor Vehicles Act, 1988, claiming compensation of Rs.8,00,000/- for the death of deceased in a road accident that took place on 19.11.2011. It is

stated that, on 19.11.2011 at about 9.00 A.M., the deceased and Banala Ravinder (P.W.2) went to Mentrajpally Village under the instructions of the 1st respondent on Hero Honda Motor Cycle bearing No.AP-25-AE-8149 and after completion of work, they were returning to Nizamabad on the same motorcycle and the deceased was riding the motor cycle. When they reached in front of Rana Garage at Madhavnagar, one Motor Cycle bearing No.AP-25-Q-0483 came in opposite direction being driven by its driver in a rash and negligent manner and dashed against the motor cycle driven by the deceased. Due to which, the deceased and the pillion rider fell down and sustained injuries. Immediately after the accident, the deceased was shifted to Government Hospital, Nizamabad, where he succumbed to injuries on the same day. It is stated that prior to the accident, the deceased was hale and healthy and was earning Rs.10,000/- per month as driver and Rs.10,000/- per month from agriculture. On account of death of the deceased, the claimants lost their source of income. It is also stated that the accident occurred due to use of

motorcycle No. AP 25 AE 8149 and the 1st respondent being the owner and 2nd respondent being the insurer of the vehicle are jointly and severally liable to pay compensation to the claimants.

Before the Tribunal, the 1st respondent filed written statement admitting the occurrence of accident and further stated that the deceased was working as car driver under the 1st respondent Trust and he was drawing monthly salary of Rs.15,000/-. The motorcycle was insured with the 2nd respondent and the policy was in force as on the date of accident. It is further stated that the claim of the claimant is exorbitant and hence it is prayed to dismiss the petition against the 1st respondent.

The 2nd respondent filed written statement denying all the material allegations made in the petition. It is specifically denied the manner of the accident, death of the deceased, age, avocation and income of the deceased. It is also stated that the accident occurred due to rash and negligent driving of the motor cycle No. AP 25 Q 0483 and as such the insured and insurer of the said motorcycle are necessary parties. Since there is collision of two

vehicles, there is likelihood of contributory negligence and prayed to dismiss the petition against the 2nd respondent.

During trial, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the Insurance Company, R.W.1 was examined and Ex.B1 was marked.

After analyzing the evidence available on record, the Tribunal held that the deceased died due to use of Hero Honda Motorcycle No.AP-25-AE-8149 and accordingly, awarded an amount of Rs.5,64,000/- with interest @ 7.5% per annum from the date of petition till the date of realization directing respondents 1 and 2 to deposit the compensation amount within one month from the date of order. Aggrieved by the same, both the appeals have been filed.

The main contention of the learned Counsel for the claimants is that the Tribunal has not taken into consideration the avocation of the deceased as driver and as well as agriculturist. It

is further submitted that though the deceased was earning Rs.10,000/- per month on agriculture, the Tribunal has erred in not fixing the income of the deceased at Rs.50,000/- per annum. Therefore, it is argued that the income of the deceased may be taken into consideration reasonably for assessing loss of dependency and prayed to enhance the same. It is further submitted that the claimants 2 and 3 are also entitled to Rs.2,00,000/- towards loss of love, affection, care and guidance; the claimants also entitled to Rs.50,000/- towards funeral expenses and Rs.2,00,000/- towards non-pecuniary damages and Rs.25,000/- towards transportation charges. It is also submitted that the Tribunal erred in applying the multiplier as '15' instead of 16 as per the Second Schedule of M.V. Act.

Per contra, the learned Counsel for the Insurance Company submits that the order of the Tribunal is contrary to law, weight of evidence and probabilities of the case. It is also submitted that the Tribunal grossly erred in entertaining the claim petition and also making the Insurance Company liable to pay compensation

though the accident occurred due to the gross negligence on the part of the deceased, who was riding a motorcycle at the material time of accident. It is further submitted that the Tribunal failed to see the provisions of the Motor Vehicles Act before fixing the liability on the Insurance Company. It is also submitted that the Tribunal grossly erred in taking the annual income of the deceased at Rs.50,000/- without any basis instead of taking notional income of Rs.15,000/- per annum. It is also submitted that interest awarded by the Tribunal is not correct.

In *United India Insurance Co. Ltd. V. Sunil Kumar*¹ the Apex Court held as under:-

“8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does

¹ AIR 2017 SC 5710

not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."

In the instant case also, the claimants filed claim-petition under Section 163-A of the M.V. Act. Since the claim-petition

filed under Section 163-A of the M.V. Act, it is not open for the Insurance Company to raise any defence of negligence on the part of the deceased.

Insofar as the quantum of compensation is concerned, the most important point which arises for consideration is, "whether in the petitions filed under Section 163-A of the M.V. Act, the ratio or law laid down by the Apex Court in *Smt. Sarla Verma v. Delhi Transport Corporation and another*²; *National Insurance Company Limited Vs. Pranay Sethi and others*³, or *Reshma Kumari vs Madan Mohan*⁴ is applicable".

Having gone through the aforesaid three cases, I am fully satisfied that the Apex Court has considered the applicability of proper multiplier, proper deductions; compensation for the loss of future prospects and proper compensation under conventional heads, only in the petitions filed under Sections 166 of the M.V. Act.

² (2009) 6 SCC 121

³ 2017 ACJ 2700

⁴ (2013) 9 SCC 65

In paragraph 17 of the judgment in the case of "Smt. Sarla Verma (2 supra) the Apex Court observed as under:-

"17. The Motor Vehicle Act, 1988 was amended by Act 54 of 1994, *inter alia* inserting Section 163A and the Second Schedule with effect from 14.11.1994. Section 163A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under section 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than

Rs.40,000/-, by applying the formula : $(2/3 \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation.”

Even in *National Insurance Company Ltd. Vs Pranay Sethi and others (3 supra)*, the Larger Bench of the Apex Court considered the applicability of proper multiplier, compulsory deductions for personal expenses of the deceased, additional compensation for the loss of future prospectus and proper compensation under conventional heads that is loss of consortium, loss of estate and funeral expenses, only in the claim Petitions filed under sections 166 of M.V. Act. The law laid down by the Apex Court in above referred cases of the Supreme Court is not applicable in the claim petitions filed under section 163-A of the M.V. Act.

In the case at hand, the claim petition is filed under Section 163A of the MV Act. Therefore, while determining the compensation only the structured formula under Section 163-A and Second Schedule of the M.V. Act can be considered. As per

Ex.A4-Post Mortem Examination Report, the deceased was aged about 37 years as on the date of his death. Therefore, as per the structured formula under Section 163-A Second Schedule of M.V. Act, proper multiplier applicable in the case on hand is '16' and not '15', as adopted by the Tribunal. After considering the evidence available on record, the Tribunal has rightly fixed the income of the deceased at Rs.50,000/- per annum. From this, 1/3rd is to be deducted towards personal expenses of the deceased. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.33,333/- per annum. By adopting multiplier '16', the total loss of dependency comes to Rs.5,33,328/- which can be rounded off to Rs.5,33,500/-. In addition to the above, the claimants are also entitled to the general damages i.e. Rs.2,000/- towards funeral expenses; Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate. As observed above, the ratio of *Pranay Sethi (3 supra)* is not applicable in the claim petition filed under Section 163-A of the M.V. Act. Therefore, no

compensation can be added towards loss of future prospects. So also, under conventional heads, compensation of Rs.77,000/- cannot be awarded, as contended by the learned Counsel for the claimants. Thus, in all the claimants are entitled to only Rs.5,43,000/- payable by the owner and insurer of Motorcycle No.A.P.25.AE.8149 jointly and severally with interest @ 9% per annum from the date of petition till the date of realisation. Therefore, the compensation awarded by the Tribunal is reduced from Rs.5,64,000/- to Rs.5,43,000/-.

With the above modification, both the appeals are disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

14.03.2022

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