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

MA.CMA.NO.2102 OF 2014

JUDGMENT

Assailing the judgment and decree passed by the court of the Chairman, Motor Accidents Claims Tribunal (I-Additional District Judge) Warangal (Tribunal) in MVOP.No.969 of 2006 dated 19.08.2013, claimants filed the present appeal seeking enhancement of compensation granted by Tribunal.

2. The deceased is one Vancha Raji Reddy. The claimants are his wife, son, and parents respectively.

3. The case of the claimants is that on 31.01.2004 at about 2.00 p.m., the deceased left the house to go to Warangal on his motorcycle bearing No. AP 36 H 647. After completion of work he was returning to his village Agrampad along with his friend P.Srinivas. That on reaching near Oorugonda village outskirts at about 8.30 p.m., they found a bus coming in opposite direction, as such, the deceased stopped the motor cycle, but in the meanwhile, the driver of the tractor and trailer bearing No.AP 36 V -6562/6561 (for brevity, crime vehicle), drove it in high speed, in a rash and negligent manner, and dashed against the motor cycle of the deceased, from its backside, due to which the deceased fell down and died instantaneously and the pillion rider P.Srinivas also sustained severe injuries. The police registered case against the driver of the crime vehicle and after thorough investigation filed charge sheet.

4. The case of the claimants is that the deceased was aged 30 years as on the date of the accident and he was hale and healthy and was owner of tractor and trailer bearing No. AP 36 K 9981/9982 and was earning an amount of Rs.5,000/- per month. Apart from that he was also doing agriculture in an extent of ten acres and was earning an amount of Rs.60,000/- per month after excluding his expenses.

5. That due to the accident, they lost the source of income and claimant No.2 lost the love and affection of his father and claimants 3 and 4 lost their son and 1st claimant lost her husband. With these averments, they filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.6,00,000/-.

6. The owner of the crime vehicle remained ex party. The insurer i.e., the respondent No.3 contested the matter and disputed the manner of accident as pleaded by the claimants, and also the age, avocation, income and further contending that the owner of the vehicle violated the terms and conditions of the policy and the driver of the crime vehicle was not having valid driving licence, and therefore, sought for dismissal of the claim petition.

7. The Tribunal framed appropriate issues, and the claimants examined P.Ws.1 and 2 and got marked Exs.A-1 to A-7, and on behalf of the respondents, R.Ws.1 and 2 were examined and they got marked Ex.B-1 copy of the policy. Ex.X-1 is the attested copy of the driving licence of G.Babu.

8. The Tribunal considering the evidence of P.W.1, and also the evidence of P.W.2, who is the eye witnesses and also injured in the said accident, and also taking into consideration, the

charge sheet Ex.A-7, held that the accident occurred due to rash and negligent driving of the driver of the crime vehicle.

9. Based on evidence, the Tribunal found that the deceased was earning an amount of Rs.50,000/- per annum and further taking the age of the deceased between 31 to 35 years, and by applying the multiplier of '16' and after deducting 1/3rd towards personal expenses, awarded an amount of Rs.5,28,000/- towards loss of dependency. The Tribunal also granted an amount of Rs.10,000/- to the 1st claimant – wife, towards loss of consortium, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate, and thus in all awarded an amount of Rs.5,48,000/- with interest at the rate of 6% per annum from the date of the claim petition till the date of payment, and also passed orders with regard to apportionment of the compensation among the claimants. The respondents 1 to 3 are made jointly and severally liable to pay the compensation.

10. The finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and that the deceased died due to the said accident and that the liability of the respondents are not in dispute and the dispute in the present appeal is only with regard to quantum.

11. Learned counsel appearing for the appellants / claimants submitted that the deceased was owner of tractor and trailer bearing No. AP 36 K-9981 and was earning an amount of Rs.5,000/- per month, and he was also doing agriculture in an extent of ten acres and was earning an amount of Rs.60,000/- per annum. The claimants have also filed pahanies issued by Village Secretary, Agrampad, which was marked as Ex.A-4, and they also filed original

Thak patties issued by Market Yard for the years 2003 and 2004 to prove his income. But the Tribunal has taken the annual income only as Rs.50,000/- and hence in view of the evidence available, on record, the annual income of the deceased may be enhanced. He further submits that as per inquest and post mortem reports, the age of the deceased is mentioned as 30 years, but the Tribunal has considered the age as between 31 to 35 years, and applied the multiplier of '16'. He submits that if the age of the deceased is taken as 30 as per the PME report and inquest report, the appropriate multiplier is '17'. He also submits that the number of dependants of the deceased are '4' in number, and the Apex Court in ***SARLA VERMA vs. DELHI TRANSPORT CORPORATION***[1], held that where the number of dependent family members of the deceased are 4 to 6, the deduction towards personal and living expenses, shall be at the rate of 1/4th. But the Tribunal deducted 1/3rd and hence requires to be modified. He further submits that the Tribunal has not granted any future prospects and the amounts granted under the conventional heads also requires enhancement as per the judgment of the Apex Court in ***NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI***[2]. With these submissions, he sought to enhance the compensation.

12. On the other hand, Sri Narasaiah Golla, learned counsel appearing for the respondents 2 and 3 – Insurance Companies submitted that the Tribunal based on evidence available on record, granted just compensation and hence the same be confirmed by dismissing the appeal.

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[1] (2009)6 SCC 121
[2] AIR 2017 SC 5157

13. In view of the rival contentions the issue that arises for consideration is whether the compensation granted by the Tribunal warrants any interference?

14. With regard to earnings of the deceased, though the claimants claimed that he was earning an amount of Rs.5,000/- per month from tractor and trailer and Rs.60,000/- per annum by doing agriculture in ten acres, they have not produced any evidence with regard to income from tractor and trailer, and the pahanies produced by them show that he was doing agriculture in an extent of Acs.6-00 and the thak patties receipts issued by the Market yard, marked as Ex.A-5 for the years 2003 and 2004, shows that he was getting income of Rs.50,000/- per annum. Hence in my considered view, the Tribunal has rightly taken the annual income of the deceased at Rs.50,000/- per annum. It is further to be noticed that even after the death of the deceased, the landed property and the tractor and trailer will remain with the claimants, which would fetch income.

15. In the present case, the dependants of the deceased are four in number and as per the judgment of the Apex Court (1 supra), the deduction shall be 1/4th , but the Tribunal has deducted 1/3rd and the same requires to be modified accordingly.

16. As per the post mortem report and inquest report, which were marked as Exs.A-2 and A-3, the age of the deceased is mentioned as 30. In view of the same, the approach of the Tribunal in considering the age of the deceased as between 31 to 35 years, cannot be sustained. Hence, as per the judgment of the Apex Court (1 supra), the appropriate multiplier is '17'.

17. Thus, the annual income of the deceased after deduction of 1/4th towards his living and personal expenses comes to Rs.37,500/- and if multiplier of '17' is applied, the income towards loss of income comes to Rs.6,37,500/- (Rs.37,500/- x 17 multiplier = Rs.6,37,500/-).

18. The deceased is aged 30 years, and hence as per the judgment of the Apex Court Pranay Sethi's (2 supra), an addition of 40% of the established income shall be made towards future prospect. 40% of Rs.6,37,500/- would come to Rs.2,55,000/-. Thus the loss of dependency would come to Rs.8,92,500/- (Rs.6,37,500/- + Rs.2,55,000/- = Rs.8,92,500/-)

19. As per the judgment of the Apex Court (2 supra), the claimants are entitled to Rs.77,000/- towards conventional head.

20. Thus, the amount of Rs.5,48,000/- granted by the Tribunal is enhanced to Rs. 9,69,500/- (Rs.8,92,500/- + Rs.77,000/-). The claimants are entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of the claim petition till the date of realisation.

21. The issue framed is accordingly answered in favour of the claimants.

22. The claimants shall pay the deficit court fee, and the amount, already deposited by the respondents shall be given credit to.

23. The apportionment of the compensation amount among the claimants and its withdrawal shall be as ordered by the Tribunal.

24. The appeal is accordingly allowed to the extent indicated above.

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

M.G.PRIYADARSINI,J

DATE:30—08—2022

AVS