

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.263 OF 2016

JUDGMENT:

This appeal is directed against the award dated 01.09.2015 in O.P.No.310 of 2012, on the file of the Chairman, Motor Accidents Claims Tribunal (District Judge), Nizamabad, (for short 'the Tribunal'), wherein the said claim application filed by respondent Nos.1 and 2 herein seeking compensation was allowed, awarding Rs.6 lakhs with interest at 7.5% per annum from the date of petition.

2. Heard learned counsel for the appellant-insurer. None appears for respondent Nos.1 and 2. Perused the material on record.

3. Respondent Nos.1 and 2 herein filed claim application seeking compensation of Rs.5 lakhs on account of death of the deceased boy Bhukya Naresh on 26.11.2011 at about 04:15 p.m. According to the claimants, on that day, the deceased along with one Bhukya Naresh was returning home from the school on a bicycle and when they reached near Anganwadi School, Mittapally

Village, a lorry bearing No.AP 20 U 8748, driven by its driver in a rash and negligent manner came from their behind and dashed their motorcycle due to which they fell down and the deceased received grievous injuries and died on the spot. Police, Dichpally registered a case in Cr.No.388 of 2011 against the driver of the lorry. The deceased was aged 8 years at the time of accident and was a student.

4. The appellant-insurer filed counter opposing the claim and denying its liability to pay the compensation. Respondent Nos.3 and 4, who are driver and owner of the lorry, remained *ex parte* before the Tribunal.

5. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the lorry by its driver. The Tribunal held that the claimants were entitled for a total compensation of Rs.6 lakhs. Accordingly, an award was passed for the said amount with interest at 7.5% per annum. Aggrieved by the same, the appellant-insurer preferred the present appeal.

6. Learned counsel for the appellant would contend that the Tribunal erred in holding that the deceased was a student aged 8 years, relying on the certified copies of inquest panchanama-Ex.A-3 and post-mortem examination report A-4; that the Tribunal erred in awarding compensation of Rs.6 lakhs instead of awarding Rs.1.5 lakhs towards fixed compensation in terms of Schedule II of the Motor Vehicles Act; that the compensation awarded is excessive; and that there was negligence on the part of the deceased who was proceeding on a bicycle which resulted in the accident.

7. The finding of the Tribunal is that the accident occurred due to the rash and negligent driving of the lorry. P.W.2 is the eye-witness to the accident which took place due to the rash and negligent driving of the offending lorry by its driver. It is true that the approximate age of the deceased was taken as '8' years basing on the certified copies of inquest panchanama-Ex.A-3 and post-mortem examination report-A-4. The Tribunal by relying on the judgment of the Apex Court, submitted by learned counsel for the claimants, in **SUBRAMANIAM AND ANOTHER v.**

DELHI METRO RAIL CORPORATON AND OTHERS¹, granted compensation of Rs.6 lakhs for the death of the deceased. However, learned counsel for the appellant-insurer has relied on the decision of the Hon'ble Apex Court in **KISHAN GOPAL AND ANOTHER v. LALA AND OTHERS²**, wherein the Apex Court while referring to the decision of the Hon'ble Apex Court in **LATA WADHWA v. STATE OF BIHAR³** held at para 36 of judgment that the compensation amount for the children between the age group of 5-10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. However, in *Kishan Gopal's* case, the Hon'ble Apex Court has fixed the notional income and applied multiplicand and awarded compensation for the death of the deceased boy. In the said case, the age of the deceased boy was '10' years and the Apex Court had taken into consideration the above age and took his notional income at Rs.30,000/- and further taking the young age of the parents, viz., the mother, who was

¹2013 Law Suit 2437

²(2014) 1 SCC 244

³(2001) 8 SCC 197

about 36 years, at the time of accident, as per the decision in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**⁴, applied the multiplier '15' and awarded compensation of Rs.4,50,000/- and Rs.50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites.

8. Coming to the facts of the present case, the Tribunal held that the deceased boy was aged '8' years at the time of accident. By applying the legal principles laid down by the Hon'ble Apex Court in **Kishan Gopal's** case (2 supra) to this case where the deceased boy was aged 8 years and was assisting the claimants and had he been alive, he would have certainly contributed substantially to the family of the claimants by working hard. Therefore, it would be just and reasonable to take his notional income at Rs.30,000/- per annum and further taking into consideration the young age of the parents namely, the mother, who was 26 years, as on the date of accident and by applying the multiplier '17' as per **Sarla Verma's** case (4 supra), the same works out to Rs.5,10,000/- (Rs.30,000/- x 17). As per the

⁴2009(6) SCC 121

decision of the Hon'ble Apex Court in **MAGMA GENERAL INSURANCE COMPANY LIMITED v. NANU RAM @ CHUHRU RAM**⁵, the parents of the deceased boy are entitled to filial consortium at Rs.40,000/- each. An amount of Rs.10,000/- towards is awarded towards funeral expenses.

9. In the circumstances, the claimants are entitled for a total compensation of Rs.6,00,000/- (Rs.5,10,000/- + Rs.80,000/- + Rs.10,000/-) with interest at 7.5% per annum from the date of petition.

10. In the result, the appeal is dismissed. There shall be no order as to costs.

11. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

17.10.2022

Lrkm

⁵2018 Law Suit (SC) 904