

(2021) 11 TEL CK 0023
In the Telangana High Court
Case No : M.A.C.M.A. No. 3611 Of 2008

Dongara Nagamani And 4 Others

APPELLANT

Vs

N. Illamma And Another

RESPONDENT

Date of Decision : 10-11-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2021) 11 TEL CK 0023

Hon'ble Judges : G. Sri Devi, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 04.07.2008, passed in O.P.No.446 of 2005 on the file of the VII-Additional Metropolitan Sessions Judge-cum-XXI-Additional Chief Judge, Hyderabad, the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

The facts, in issue, are as under:

The appellants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.6,00,000/- for the death of one Dongara Saidulu (hereinafter referred to as "the deceased"), who died in a road accident that occurred on 19.08.2005. It is stated that on 19.08.2005 while the deceased and his friend Ch.Srinivas were proceeding on his motor bike bearing No.AP-24-K-4526 from Nakrekal towards Nalgonda, the Tata Sumo bearing No.AP-28-V-102 belonging to the 1st respondent came from opposite direction at high speed in a rash and negligent manner and swerved to right side crossing the middle line and grazed the right side of bike and as such the deceased sustained head injury and his friend also sustained injuries. The deceased was shifted to the Government Hospital, Nakrekal, for treatment and while undergoing treatment, the deceased succumbed to injuries. On a complaint, a case in Crime

No.84 of 2005 of Kattangur Police Station, was registered against the driver of the Tata Sumo Vehicle. Since the 1st respondent being the owner of the vehicle and the 2nd respondent being insurer of the vehicle, are jointly and severally liable to pay compensation. Respondent Nos.1 and 2 filed their counters denying all the material allegations in the petition and prayed to dismiss the petition.

Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident resulting in death of Dongara Saidulu occurred owing to the rash and negligent driving of the driver of Tata Sumo bearing No. AP 28 V 102?
- 2) Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
- 3) To what relief?

In support of their claim, the appellants examined P.Ws.1 to 4 and got marked Exs.A1 to A12. On behalf of the respondents, no oral evidence was adduced but Ex.B1-copy of policy was marked. After analyzing the evidence available on record, the Tribunal held that the accident was result of rash and negligent driving of the driver of Tata Sumo vehicle belonging to the 1st respondent and accordingly awarded an amount of Rs.4,67,000/- as compensation to be paid by the respondents. Challenging the quantum of compensation awarded, the present appeal is filed by the appellants/claimants.

The main contention of the learned Counsel for the appellants is that the Tribunal has not taken into consideration the occupation of the deceased as teacher. The income of the deceased was assessed by the Tribunal as Rs.100/- per day and Rs.3,000/- per month, which is not even minimum wages earned by a labourer. It is further submitted that as per the principles laid down by the Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others 2017 ACJ 2700, the claimants are also entitled to future prospects. 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.

In spite of service of notice, there is no representation on behalf of the 1st respondent/owner of the crime vehicle.

Per contra, the learned Counsel for the Insurance Company submits that income of the deceased has rightly been taken by the Tribunal as Rs.3,000/- per month since no documentary evidence has been produced by the appellants. On the point of future prospects, learned Counsel submits that the matter has been considered by the Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others (supra) and as per that judgment, for the age between 25 to 30 years, 40% amount towards future prospects be applicable. It is further submitted that the compensation under conventional heads has also been rightly granted by the Tribunal and the same need not be enhanced.

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.

The short question that arises for consideration is "whether the compensation awarded by the Tribunal is just and equitable"?

The Motor Vehicles Act is beneficial and welfare legislation. The Court is duty-bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimants. So far as income of the deceased is concerned, the Tribunal has taken the monthly income of the deceased as Rs.3,000/ though the claimants had claimed an amount of Rs.7,000/- per month. Since no evidence has been placed on record to prove Ex.A12-salary certificate, the Tribunal has not accepted the same.

So far as the future prospects are concerned, 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 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.

According to the appellants, since the age of deceased at the time of death was 29 years, an addition of 40% of the established income should be granted. Confronting this claim of the appellants, learned Counsel for the 2nd respondent-Insurance Company has contended that since the Apex Court in Pranay Sethi's case (supra) has held that when the deceased was below the age of 40 years, an addition of 40% of the established income should be granted, the appellants are entitled to get 40% of the established income only.

In Pranay Sethi's case (supra), the Apex Court, after dealing with the issue of future prospect and other issues, has laid down the following guidelines in determining the future prospects:

"In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the

income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was 48 between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case, the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

(emphasis supplied)

After considering the evidence available on record, the Tribunal held that the deceased was aged about 29 years at the time of the accident. In view of the judgment of the Apex Court in *Sarla Verma v. Delhi Transport Corporation* 2009 ACJ 1298 (SC) the suitable multiplier would be '18'. If the income of the deceased at Rs.3,000/- per month as fixed by the Tribunal is taken and if 40% of the income is added to the actual income of the deceased towards future prospects, the total income of the deceased would be Rs.4,200/- per month. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased would be Rs.2,800/- per month and Rs.33,600/- per annum. Applying multiplier '18' the total loss of dependency would be Rs.33,600/- x 18 = Rs.6,04,800/-. The tribunal also awarded a sum of Rs.35,000/- under conventional heads. In *Pranay Sethi's case* (supra), the Apex Court held that "the reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively". In view of the law laid down by the Apex Court in *Pranay Sethi's case* (supra), the appellants are entitled to Rs.70,000/- under conventional heads. Thus, in all the claimants are entitled to Rs.6,74,800/-.

At this stage, the learned counsel for the Insurance company submits that the claimants claimed only a sum of Rs.6,00,000/- as compensation and the

quantum of compensation which is now awarded would go beyond the claim made, which is impermissible under law. The learned Counsel for the appellants/claimants would submit that the claimants filed I.A.No.1 of 2021 seeking enhancement of the claim from Rs.6.00 lakhs to Rs.14.00 lakhs and the same is pending.

In *Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another* (2011) 10 SCC 756, the Apex Court while referring to *Nagappa Vs. Gurudayal Singh* 2003 ACJ 12 (SC) held as under:

"It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in *Nagappa vs. Gurudayal Singh* (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

In view of the Judgments of the Apex Court referred to above the claimants are entitled to get more amount than what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

Accordingly, the appeal is allowed in part and the compensation amount awarded by the Tribunal is hereby enhanced from Rs.4,67,000/- to Rs.6,74,800/-. The enhanced amount will carry interest at 7.5% p.a. from the date of order passed by the Tribunal i.e. 04.07.2008 till the date of realization, payable by respondents 1 and 2 jointly and severally. The enhanced amount shall be apportioned among the claimants in the same proportion in which original compensation amounts were directed by the Tribunal. However, the claimants are directed to pay deficit Court fee, on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.