IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TEN

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

C.M.A. No.1082 of 2002

Between:

Lingani Dasu and another .. Appellants

AND

K. Srinivas Reddy and another .. Respondents

JUDGMENT:

This appeal is directed against the common award passed in O.P. Nos.439 and 419 of 1999 by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Medak at Sangareddy on 24-08-2001.

Lingani Krupakar, aged 19 years, working as a cleaner on DCM van AP10U 550, was travelling in the same from Gajwel to Warangal on 28-03-1999. The driver drove the van rashly and negligently and dashed a stationed lorry parked by the side of the road resulting in the death of Krupakar on the spot. The claimants are the parents of Krupakar, who are solely dependent on him and they claimed a compensation of Rs.1,50,000/- under Section 166 of the Motor Vehicles Act, 1988 in O.P. No.439 of 1999, while claiming Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 towards no fault liability compensation in O.P. No.419 of 1999.

The insurer/2nd respondent contested the claim, while the owner of the van/1st respondent remained ex parte. The insurer denied the allegations of the claimants and contended that the deceased was only an unauthorized passenger, due to which the insurer is not liable to pay any compensation.

The Tribunal framed issues in O.P. No.439 of 1999 about the responsibility for the accident and the entitlement of the claimants to compensation and examined P.Ws.1 and 2 and marked Exs.A.1 to A.5 and Ex.B.1 during the enquiry.

Both the claim petitions were clubbed together and decided by the impugned award with the Tribunal firstly concluding that P.W.2, the eye witness and the security guard in Rane Beak Linking Limited near the scene, proved the accident to be due to the rash and negligent driving of the van by its driver, as corroborated by Ex.A.1 first information report and Ex.A.2 charge-sheet and not contradicted by any evidence for the respondents.

The Tribunal in the absence of any documentary evidence to show the earning capacity of the deceased, assessed the monthly income of the deceased at Rs.900/- per month and the contribution to the parents at Rs.500/- per month. The age of the mother was taken as 40 years by the Tribunal, though she was claimed by the claimants to be aged only 35 years and multiplier of 12 was adopted to arrive at the loss of dependency at Rs.72,000/-. Adding Rs.15,000/- towards non-pecuniary damages, the Tribunal awarded a compensation of Rs.87,000/- with interest at 9 per cent per annum from the date of the petition till the date of realization and proportionate costs, while directing equal apportionment of the compensation between the parents and giving directions about the disbursement of the compensation.

The claimants are before this Court being aggrieved by the

said award contending that the deceased was earning Rs.1,800/- per month at the age of 18 years and the contribution should have been taken as at least Rs.1,200/- per month to the parents. The multiplier adopted also was incorrect and should have been 16 and the interest should have been awarded at 18 per cent per annum. The appeal was, therefore, for being granted the remaining compensation of Rs.63,000/-.

Heard Sri P. Sri Harinath, learned counsel representing Sri K. Raji Reddy, learned counsel for the appellants and Sri Sriman, learned standing counsel for the 2nd respondent, while the appeal was dismissed for default against the 1st respondent by order of this Court, dated 23-04-2008.

The respondents did not challenge, in any manner, the conclusions of the Tribunal about the responsibility of the van driver for the accident, the ownership of the van with the 1st respondent, its subsisting insurance with the 2nd respondent and the consequent joint and several liability of both the respondents to justly and adequately compensate the parents of the deceased Krupakar.

Therefore, the only question that remains for consideration is the quantum of compensation to be awarded.

The claim petition and the evidence of P.W.1 specifically claimed that the deceased was earning Rs.1,800/- per month as a cleaner of the van in question. Except suggesting that it was not so, no material has been produced on behalf of the insurer/the contesting respondent. Sri P. Sri Harinath rightly relied on **P. Eshwari Balarajaiah and others v. Md. Riyas and another**[1], wherein this Court was referring to fixation of a minimum wage of Rs.50/- per day to an unskilled labourer under the relevant notification issued by Government of India under the Minimum

Wages Act. The accident in question therein was on 20-08-1992 and therefore, the notification referred to by the Division Bench must have been with reference to that year. The deceased Krupakar was involved in the accident on 28-03-1999 almost seven years thereafter and even if he were to be construed as an unskilled labourer as the cleaner of the van, his minimum wages under the relevant Statutory notification must have been much more. Even if the daily wage was taken at Rs.50/- at the scale in force in 1992 and if one-third of such income were to be deducted towards the personal expenses of the deceased, still the balance of loss of dependency would come to Rs.12,000/- per annum and even if the lower multiplier of 14 as per **Sarla Verma v. Delhi Transport Corporation**[2] has to be adopted taking the mother of the deceased to be aged about 41 years by the relevant time, the compensation for loss of dependency would be a minimum of Rs.1,68,000/-. If the age were to be accepted as 35 years as claimed by the claimants, such compensation would be much more and in addition to the loss of dependency, the claimants also would have been entitled towards other heads of pecuniary and non-pecuniary damages and therefore, the objection against deducting only one-third of the assessed income of the deceased towards his personal expenses needs no consideration, more so as the Apex Court has made it clear in **Sarla Verma v. Delhi Transport Corporation** (2 supra) that the percentage of deduction is not an inflexible rule and offers merely a guideline.

Therefore, the claimants appear to be entitled even on a conservative estimate to something more than what they claimed in the claim petition. However, their claim before the Tribunal and herein is confined to a sum of Rs.1,50,000/- and though it would have been legal to grant more, taking into account the liability of the respondents to pay interest on the compensation to be

awarded from the date of the petition, the grant of amount claimed will subserve the interests of justice and represents just and adequate compensation. The interest on the enhanced portion of compensation payable for about 11 years can be restricted to 6 per cent per annum.

Accordingly, the common award in O.P. Nos.439 and 419 of 1999 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Medak at Sangareddy, dated 24-08-2001 is modified by awarding a further compensation of Rs.63,000/- (Rupees sixty three thousand only) with interest at 6 per cent per annum thereon from the date of the petition till the date of realization and proportionate costs in addition to the compensation already awarded by the impugned award and no directions need be given at this distance of time concerning the disbursement of compensation to be shared equally between the claimants. The appeal is allowed accordingly without costs.

G. BHAVANI PRASAD, J

Date: 30-09-2010

Svv

---

[1] 2003 (2) An.W.R. 418 (D.B.)

[2] 2009 ACJ 1298