

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.No.267 of 2018

JUDGMENT :

This appeal is filed by the claimant being aggrieved by the order and decree dated 07.11.2017 in M.V.O.P.No.643 of 2014 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad, for the death of the deceased, namely, Smt.M. Yellamma, who died in the accident which occurred on 31.03.2014.

2. The appeal is filed for enhancement of the compensation. Initially, the claim was made for Rs.6,00,000/- and the Tribunal awarded an amount of Rs.1,96,000/-.

3. For the sake of convenience, the parties are referred to as arrayed in the O.P.

4. The deceased is the mother of the claimant. It is contended in the claim petition that the deceased used to earn Rs.15,000/- by doing vegetable business and died in the accident on 31.03.2014

due to the rash and negligent driving of the 1st respondent while she was proceeding to her house by foot.

5. The 2nd respondent/Insurance Company filed a detailed counter affidavit disputing the age, income and occupation of the deceased. The tribunal, after considering the oral and documentary evidence, taken the income of the deceased as Rs.3,000/- per month and deducted 50% towards her personal expenses and granted compensation to a tune of Rs.1,96,000/-.

6. Heard both sides and perused the record.

7. It is contended by the learned counsel for the appellant that the tribunal ought not have taken the age of the deceased as 61 years, as she was aged about 51 years as on the date of the accident. It is further contended that the appellant is also entitled for compensation on the other conventional heads and prayed to grant appropriate compensation, including compensation towards consortium.

8. On the other hand, the learned counsel for the 2nd respondent-insurance company contended that the tribunal has rightly considered the income of the deceased and the claimant is not entitled for parental consortium as he is not a child. In support of his contentions, the learned counsel for 2nd respondent has relied on the judgment of the Apex Court in **Magma General Insurance Co. Ltd. v. Nanu Ram & others**¹ and on the judgment of the High Court of Jammu and Kashmir in **National Insurance Co. Ltd. v. Purna Devi & others**².

9. The recitals in the claim petition reveal that the age of the deceased was 55 years and was earning more than Rs.15,000/- per month from her vegetable business. On the other hand, Exs.A-5 and A-6 i.e. the inquest and postmortem reports of the deceased respectively, disclose the age of the deceased to be 61 years. The Tribunal, relying on Exs.A-5 and A-6, has taken the age of the deceased as 61 years. But, Ex.A-7 i.e. the Xerox copy of the Aadhaar card of the deceased, which disclose that the deceased was born in the year 1955. Admittedly, the accident occurred on

¹ 2018 ACJ 2782

² MA.No.231 of 2016 of J&K High Court

31.03.2014. So, it can be construed that the deceased was aged 59 years as on the date of the accident.

10. As per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**³, even non-earning member's income has to be taken as Rs.100/- per day, which comes to Rs.3,000/- per month. There is no dispute as to the avocation of the deceased as vegetable vendor. The evidence of PW-2 corroborates the evidence of PW-1 as to the occupation of the deceased as vegetable vendor. The Hon'ble Apex Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd**⁴, considered the income of a coolie as Rs.4,500/- per month even in the absence of documentary evidence. Therefore, the income of the deceased can be taken as Rs.4,500/- per month even in the absence of documentary evidence.

11. The Tribunal has granted compensation to the claimant under the following heads:

³ (2009) 6 SCC 121

⁴ (2011) 13 SCC 236

1. Loss of dependency	- Rs.1,26,000/-
2. Loss of love and affection	-Rs.25,000/-
3. Transportation	-Rs.20,000/-
4. Funeral expenses	-Rs.25,000/-
TOTAL	-Rs.1,96,000/-

12. As per Ex.A-7, the deceased was aged 59 years as on the date of the accident and the income of the deceased is fixed as Rs.4,500/- per month as a vegetable vendor. As per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**⁵, the multiplier applicable is '9' for the age group of 56 to 60 years. The annual income of the deceased is Rs.54,000/-. As per the judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi & others**⁶, the deceased is entitled to 10% of future prospects, and if it is added, it would come to Rs.59,400/- (Rs.54,000 + Rs.5,400). If 1/3rd is deducted towards personal expenses of the deceased, her contribution to the family would come to Rs.39,600/- (Rs.59,400-19,800). If the multiplier '9' is applied, it would come to Rs.3,56,400/- (Rs.39,600 X 9).

⁵ (2009) 6 SCC 121

⁶ 2017 ACJ 2700

13. Admittedly, the accident took place on 31.03.2014 and the deceased died on 05.08.2014 and the Tribunal considered the oral and documentary evidence on record and granted a sum of Rs.20,000/- towards transportation to the hospital for treatment and the same can be awarded apart from the conventional heads. As contended by the learned counsel for the 2nd respondent, the claimant is aged 50 years and as such, he is not entitled for parental consortium, in view of the propositions of the Apex Court.

14. Thus, the claimant is entitled to the compensation under the following heads;

1. Loss of dependency	-	Rs.3,56,400/-
2. Funeral expenses	-	Rs.15,000/-
3. Transportation	-	Rs.20,000/-
4. Loss of Estate	-	Rs.15,000/-
TOTAL	-	Rs.4,06,400/-

15. Accordingly, the appeal is allowed, granting a total compensation of Rs.4,06,400/- with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, payable by respondents 1 and 2 jointly and severally, within two months from the date of receipt of this order. The

claimant is permitted to withdraw the amount as the accident took place in the year 2014.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 25.07.2022

ajr