

HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A. No.852 of 2015

JUDGMENT:

Aggrieved by the quantum of compensation awarded, the claimants / petitioners filed this appeal against the decree and order dt.03.01.2015 passed in MVOP.No.934 of 2012 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – XIII Additional District and Sessions Judge, Ranga Reddy District.

2. The claim petition is filed seeking compensation of Rs.65,00,000/- for the death of one P. Sandeep / deceased who died in a road accident on 07.11.2012 at Gurunanak Engineering College, Campus, Ibrahimpatnam.

3. The claimants / petitioners are the parents of Sandeep / deceased.

4. The appellants / petitioners' case in brief is that their son Sandeep was a bright student with excellent academic record and was studying B.Tech. (final year) in Gurunanak Engineering College, Ibrahimpatnam, went to college on 07.11.2012 to attend campus selections. At about 05:00 p.m., while Sandeep / deceased was standing along with his friends to board the college bus, an APSRTC Bus bearing Registration No.AP-29-TA-0629 (the 'bus') driven by its driver in a rash and negligent manner came from behind, struck him. As a result, he was crushed between two buses. Immediately, the injured was shifted to Ankita Hospital, Ibrahimpatnam for treatment. There, the Doctors

declared that the petitioner's son is 'brought dead'. Thereafter, the appellants / petitioners filed the petition, claiming compensation.

5. The Tribunal after due enquiry passed the order by granting Rs.40,50,000/- towards loss of dependency, Rs.5,000/- towards transportation expenses; Rs.2,000/- for damage to clothing; Rs.25,000/- for funeral expenses; and Rs.1,00,000/- under loss of love and affection, in total Rs.41,82,000/- with interest at 7% per annum, and both the respondents were jointly and severally liable to pay compensation.

6. Aggrieved by the quantum of amount awarded, the appellants / petitioners filed the present Appeal, contending that the Tribunal erred in properly assessing the material in computing compensation. Further, pleaded that the Salary Certificate issued is for Rs.3,49,416/- per annum, but the Tribunal has taken only Rs.3,00,000/- by considering statement of K. Anil Kumar / P.W.3 that the amount includes commission. Hence, the Tribunal without any basis erroneously deducted the amounts from the annual salary and it effected the quantum of compensation.

7. On the other hand, the counsel for 2nd respondent / insurer submitted that the Tribunal by considering the material on record, generously determined the monthly income of the deceased, and awarded fair compensation, therefore, the impugned order may be confirmed.

8. The seminal point arises for determination is "*whether the compensation awarded to petitioners is 'just and proper'*"?

9. To prove the income, the appellants / petitioners placed the appointment order / Ex.A.15 and got examined Sri K. Anil Kumar / P.W.3, who is student counselor of the IT Consultant Firm (Skill matters). The PW.3, during evidence stated that the annual pay is inclusive of the Company's Commission. However, what is the amount of commission is not specified.

10. In the appointment order / Ex.A.15, issued by 'Skill Matters', the pay is reflecting under the heads of Basic, House Rent Allowance and Dearness Allowance, together at Rs.3,19,416/-, and the head of 'annual benefits' medical reimbursement and leave travel allowance at Rs.30,000/-, in total, Rs.3,49,416/-. The Ex.A.15 is with contractual terms and none of these conditions are prescribing any commission. It is noteworthy that K. Anil Kumar / PW.3, is the counselor for the same Firm, which offered employment to Sri P. Sandeep / deceased under Ex.A.15. The firm which is offering job and pay, collecting commission for providing employment from out of the proposed pay, is incomprehensible. Further, the heads under which the pay is shown in Ex.A.15 are entirely payable to the employee, on annual scale. That aspect, without any obligation in the contractual terms of appointment order / Ex.A.15, only an oral statement of PW.3, deducting any amount towards commission, is not justified. As such, the entire annual income shown in Ex.A.15 shall be taken as the income of the Sandeep / deceased, by rounding it off to Rs.3,50,000/-.

11. Further, as per the dictum of **National Insurance Company Ltd. vs. Pranay Sethi and ors.**¹, future prospects of income shall be added even for self-employed, and for the deceased below 40 years, 40% of the existing monthly pay shall be included.

12. In the present case, on the date of accident, the age of Sandeep / deceased is 20 years, therefore, 40% of the annual income, i.e., Rs.1,40,000/- (40% of 3,50,000/-) shall be added towards future prospects of income. Thus, the annual earnings of Sandeep / deceased including future prospects would be Rs.4,90,000/-.

13. As the deceased was a bachelor, as per the authority of **Sarla Verma & Ors Vs Delhi Transport Corp. & Anr**², 50% is to be deducted towards personal expenses from the annual earnings, i.e., $\text{Rs.4,90,000} / 2 = \text{Rs.2,45,000/-}$. The remaining amount is the annual contribution of the deceased to the family.

14. As the age of the deceased is 20 years, the relevant multiplier as per **Sarla Verma** (2 supra) is 18. If the annual contribution of the deceased is multiplied with the relevant multiplier 18, it comes to Rs.44,10,000/- ($\text{Rs.2,45,000/-} \times 18$). This amount shall be awarded towards loss of dependency.

15. In addition, the petitioners are also entitled to compensation under conventional heads as per **Pranay Sethi** (1 supra). Accordingly,

¹ (2017) 16 SCC 860

² ACJ 2013 Page 1409

Rs.15,000/- for loss of estate; Rs.15,000/- for funeral expenses is awarded.

16. Further, the Hon'ble Supreme Court, reiterating the comprehensive interpretation to 'consortium' given in the authority of **Magma General Insurance co. Ltd. vs. Nanu Ram & ors.**³, held in **United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others**⁴ that, the amounts for loss of consortium shall be awarded to parents as 'filial consortium' for the loss of their grown-up children, to compensate their agony, love and affection, care and companionship of deceased children, and that the compensation can be awarded only for loss of consortium and not for loss of love and affection. Accordingly, the 1st and 2nd appellants / petitioners are entitled for Rs.40,000/- each towards filial consortium.

17. Further, the compensation towards transportation expenses and damage to clothing as granted by the Tribunal are confirmed.

18. Thus, the total compensation that can be awarded to petitioners under various heads are as follows :

(i)	Loss of Dependency	:	Rs.44,10,000/-
(ii)	Loss of Estate	:	Rs.15,000/-
(iii)	Funeral Expenses	:	Rs.15,000/-
(iv)	Filial Consortium, @ Rs.40,000/- each		

³ (2018) 18 SCC 130

⁴ (2020) 9 SCC 644

to 1 st and 2 nd petitioners	:	Rs.80,000/-
(v) Transportation	:	Rs.5,000/-
(vi) Clothing	:	Rs.2,000/-
Total	:	Rs.45,27,000/-

19. In the above terms, the awarded compensation to the appellants / petitioners is modified.

20. In the result, the appeal is allowed in part in the following terms, viz., :

(i) the appellants / petitioners are granted Rs.45,27,000/- towards compensation with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization;

(ii) the 1st and 2nd respondents are jointly and severally liable to pay the compensation;

(iii) the 1st and 2nd respondents are directed to deposit the enhanced amount with interest within one (01) month from the date of receipt of copy of the order; and

(iv) the apportionment of compensation amount shall be in terms of the Tribunal award and on deposit the appellants / 1st and 2nd petitioner are permitted to withdraw entire amounts as per their share.

21. As a sequel, miscellaneous petitions pending if any in this Appeal, shall stand closed.

N. TUKARAMJI, J

Date: 10.11.2021
Ndr