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%™™™™™üCüC-%j™™™WD™™™™R R R ¤öäR R R öR R R > > > > > > ÿÿÿÿTHE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI CIVIL MISCELLANEOUS APPEAL No.2734 OF 2004 JUDGMENT: Not having been satisfied with the quantum of compensation awarded by the Tribunal, the claimants had preferred this Civil Miscellaneous Appeal under Section 173 (1) of the Motor Vehicles Act, 1988, assailing the award, dated 25.09.2001 of the learned Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Hindupur, passed in O.P.No.56 of 2000. 2. I have heard the submissions of the learned counsel for appellants/claimants ('claimants' for brevity) and the learned counsel for the second respondent-Insurance Company ('Insurance Company' for brevity). Though notice is served on the first respondent, none appeared. I have perused the material record. 2. (a) The parties in this appeal shall hereinafter be referred to as claimants and Insurance Company for convenience and clarity. 3. The case of the claimants, in brief, is as follows: The first claimant is the son and the second and third claimants are the daughters of the deceased, Jaina Bi, W/o. Late Syed Jaharuddin ('the deceased' for brevity). Prior to her involvement in the accident, the deceased was hale and healthy and used to do small business in wire bags and earn Rs.3,000/- per month. She was the only earning member of the family. On 28.09.1999, the deceased had boarded an Auto to go from Mothukapalli to Hindupur. On the way, when the said Auto had reached a place near Karim Basha Work Shop near Mothukapalli, a (private) bus bearing registration No. ATA 2295 being driven by its Driver at a high speed and in a rash and negligent manner came from the opposite side and dashed the said Auto. As a result, the Auto had capsized on the road side. In the said accident, the deceased had suffered grievous injuries and had succumbed to the injuries on the spot. The claimants used to depend entirely on the earnings of the deceased; and, on account of her death they had lost love and affection and are unable to maintain themselves. Therefore, the claim petition is filed claiming a compensation of Rs.2,50,000/-. The first respondent is the owner-cum-insured and the second respondent is the insurer of the said Bus. Both the respondents are jointly and severally liable to pay the compensation to the claimants. 4. The first respondent had remained ex parte before the Tribunal. The Insurance Company having filed a written statement had resisted the claim on various grounds. 5. At trial, the first claimant and an eye witness to the accident were examined as PWs.1 and 2 and exhibits A1 to A5 were marked on the side of the claimants. No oral and documentary evidence was adduced on the side of the Insurance Company. 6. On merits, the Tribunal having held that the claimants are the legal heirs of the deceased and that the accident resulting in the death of the deceased had occurred due to the rash and negligent driving of the bus bearing registration No. ATA 2295 by its driver had awarded a compensation of Rs.72,400/- with interest at 9% per annum simple from the date of petition till the date of realisation. The Tribunal had also held that both the respondents are jointly and severally liable to pay the said compensation with interest and proportionate costs to the claimants. The Tribunal further directed the respondents to deposit the compensation into the Tribunal within a month. 7. The learned counsel for the claimants would contend as follows: The Tribunal awarded a meagre compensation of Rs.72,400/- instead of awarding just, reasonable and fair compensation to which the claimants are entitled to under facts and the law. The Tribunal ought to have seen that the claimants had adduced evidence that the deceased was earning Rs.3,000/- per month. The Tribunal erred in taking the income of the deceased at Rs.1,000/- per month. The Tribunal ought to have seen that the deceased was making baskets with the assistance of her children and that the deceased was getting Rs.3,000/- per month exclusively from her business. The Tribunal erred in apportioning the said income amongst the children and the deceased. The deceased was contributing the entire income to the family. The Tribunal had failed to award compensation under all the relevant heads as per law. The Tribunal ought to have determined just and fair compensation and ought to have awarded compensation, if necessary, by awarding more amount than claimed as per the settled legal position. Therefore, the appeal may be allowed and just, reasonable and fair compensation may be awarded. 8. On the other hand, the learned counsel for the Insurance Company would contend that the claimants are the aged children of the deceased and that they are of the ages 29, 25 and 19 years by the year 2000 as per the cause title in this Civil Miscellaneous Appeal and that they had never depended upon the earnings of the deceased during her lifetime and that the Tribunal had determined the compensation taking into consideration the facts and the evidence on record and also the legal position as was then obtaining and that the Tribunal had correctly determined the monthly income as well as the multiplier and had awarded reasonable and fair compensation and that there is no merit in the appeal and that the appeal is liable to be dismissed. 9. The points for consideration are: (i) Whether the compensation awarded by the Tribunal is not just, reasonable and fair as contended by the appellants-claimants? (ii) What shall be the just, reasonable and fair compensation to be determined and awarded to the claimants in the facts and circumstances of the case. 10. POINTS: 10. (a) The case of the claimants which is relevant is as follows: The claimants are the son aged 29 years and two major unmarried daughters of the deceased. The deceased was of 48 years of age and used to do small business in wire bags and earn Rs.3,000/- per month and maintain the family by contributing her entire income and that the claimants had totally depended upon the earnings of the deceased and that on account of the death of the deceased, who is the mother of the claimants, the claimants had lost the only earning member of the family, and had lost love and affection and had suffered mental agony, which cannot be compensated in terms of money. 10. (b) On the other hand, the case of the Insurance Company is in the nature of specific and general denial. Further, the Insurance Company put the claimants to strict proof of their case and their entitlement to the compensation. 10. (c) PW1, the first claimant, had deposed in line with the pleaded case. He had asserted that his mother was of 48 years of age and that she used to earn Rs.3,000/- per month on her basket making business and that he and his sisters are unmarried and they were dependant upon the earnings of the deceased during her lifetime, and that therefore, they are entitled to the compensation. He had maintained his stand in the cross-examination. 10. (d) Coming first to the income of the deceased, the Tribunal having considered the evidence of PW1 to the effect that all the members of the family were involved in basket making and earning Rs.3,000/- per month, had determined the share of the income of the deceased from the said business as Rs.1,000/- only per month by treating the earnings of Rs.3,000/- per month as the total earnings of all the members of the family. The learned counsel for the claimants had contended that the children are only assisting the mother in basket making and that the entire earnings must be treated as the earnings of the deceased only. A careful perusal of the evidence of PW1, the son of the deceased, would show that he was of 30 years of age on the date of his evidence and that he has been selling baskets since 10 years prior to that day and that he does not know manufacturing of baskets and that he only engages himself in selling baskets and that per day he used to sell two or three baskets, which were used to be prepared by his mother, and that they used invest Rs.50/- to Rs.60/- in making one basket and that each basket was used to be sold @ Rs.100/-. He has further stated in his evidence that he was and is selling the baskets as a street vendor and that after the death of his mother they are able to make only one or two baskets per day and that there is deficiency in the manufacture of baskets (plastic wire baskets). He had denied the suggestion that his mother never used to make baskets and that he is speaking falsehood. He had admitted that his two sisters are married as on the date of his deposition before the Tribunal. The evidence on record is sufficient to come to a safe conclusion that the deceased was earning some income on her basket making business. She is also the mother of three children, the claimants. Even her contribution to the family as a mother can be evaluated in terms of money while arriving at some notional income on that count apart from income from the business. The accident has taken place in September, 1999. Therefore, it is reasonable to accept her earnings at Rs.1,500/- per month. Since she is aged between 40 and 50 years, 30% can be added towards future prospects. Therefore, after adding Rs.450/- towards future prospects, the total monthly income of the deceased works out to Rs.1,950/-, out of it a 1/3rd i.e., Rs.650/- is to be deducted towards her personal and living expenses. If the said sum is so deducted, her monthly contribution to the family works out to Rs.1,300/-. The annual contribution works out to Rs.15,600/- (Rs.1,300/- X 12). Therefore, Rs.15,600/- is the multiplicand. Coming to the multiplier, according to the case of the claimants, the deceased was of 48 years of age at the time of her death. Her inquest report-exhibit A2 also shows that she was of 48 years of age at the time of her death. Therefore, as per the table in the decision in Sarla Verma v. Delhi Transport Corporation the appropriate multiplier is '13' (thirteen). If the above multiplicand is multiplied with the said multiplier, the compensation under the head 'loss of dependency' works out to Rs.2,02,800/- and the said amount is awarded as compensation under the head 'loss of dependency'. 10. (e) Coming to the compensation under other conventional heads, the Tribunal awarded Rs.2,000/- towards funeral expenses and had not awarded any other compensation under any other heads. In the decision in HYPERLINK "http://indiankanoon.org/doc/103664165/" Anjani Singh and others V. Salauddin and others, the Honourable Supreme Court by following the ratio in a three Judge Bench decision in Rajesh and others V. Rajbir Singh and others had awarded in that case Rs.25,000/- towards

funeral expenses. In the case of Rajesh (3 supra), the Hon'ble Supreme Court held to the following effect: "We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "Funeral expenses" does not mean the fee paid in the crematorium or the fee paid for the use of space in the Cemetery and that there are many other expenses in connection with the funeral, besides expenses associated with religious practices and conventions and all those religious practices and conventions are very expensive." The claimants are majors at the time of the death of their mother in the subject accident. Therefore, apart from funeral expenses, the claimants are also entitled to Rs.5,000/- each under the two conventional heads 'loss of estate' and 'transport expenses'. 10. (f) Accordingly, the claimants are entitled to the following compensation amounts: Sl.No.Head of CompensationAmount (in Rs.)1.Loss of dependency2,02,800-002.Transport expenses 5,000-003.Loss of estate 5,000-004.Funeral expenses 25,000-00Total 2,37,800-00 (Rupees Two Lakhs Thirty Seven Thousand Eight Hundred only) In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. The rest of the claim is disallowed. Thus, the total compensation to which the claimants are entitled to as determined by this Court is Rs.2,37,800/-. Both the insured and the insurer are jointly and severally liable to pay the same to the claimants with proportionate costs and interest. 10. (g) Coming to the rate of interest, it is just and fair to award interest at the rate of 7.5% per annum simple on the present enhanced compensation amount. 11. In the result, the appeal is allowed in part with proportionate costs awarding total compensation of Rs.2,37,800/-. The compensation awarded is apportioned as under amongst the claimants 1 to 3: Rs.81,800/- (Rupees Eighty One Thousand Eight Hundred) to the first claimant. Rs.78,000/- (Rupees Seventy Eight Thousand) to the second claimant. Rs.78,000/- (Rupees Seventy Eight Thousand) to the third claimant. Having regard to the facts and circumstances, the Insurance Company is directed to deposit before the Tribunal the enhanced portion of the compensation i.e., Rs.1,65,400/- (Rupees One Lakh Sixty Five Thousand Four Hundred) with interest at 7.5% per annum simple from the date of original petition till the date of payment and also proportionate costs within two months from the date of receipt of a copy of this judgment. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. On such deposit of the amounts before the Tribunal, the claimants are permitted to withdraw their respective shares of compensation as determined supra. The first claimant is permitted to withdraw the proportionate costs also. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. ___________________________ JUSTICE M. SEETHARAMA MURTI April 17, 2015 MD THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI CIVIL MISCELLANEOUS APPEAL No.2734 OF 2004 April 17, 2015 MD . 2009 12 ACJ 1298 2014 ACJ 1565 (2013) 9 SCC 54 PAGE PAGE 10 MSRM,J C.M.A.No.2734 of 2004 ,-HKOSWYabdeiËÏ * / K U

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