HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No. 237 of 2013

ORDER :

This Appeal is filed by the Insurance Company against the Judgment and Decree dated 12.04.2012 in M.V.O.P.No.341 of 2009 wherein the Motor Accidents Claims Tribunal –cum-VI Addl. District & Sessions Judge, Markapur, has granted an amount of Rs.1,85,000/- together with interest @ 8% p.a, from the date of petition till realization with proportionate costs, as compensation towards death of deceased in favour of the respondents 1 and 2 herein and against the appellant and respondents 3 and 4.

2. For the sake of convenience, the parties herein after will be referred to as arrayed in the M.V.O.P.

The petitioners filed M.V.O.P.No.341 of 2009 under Section 163-A of the Motor Vehicles Act claiming an amount of Rs.3,00,000/- as compensation for the death of the deceased in motor accident with interest at 15% p.a from the date of petition till realization. It is the case of the petitioners that the deceased was hale and healthy as on the date of accident i.e., 03.03.2007, on which date, the deceased along with others boarded an auto bearing registration No.AP 27V 5181 to go to his village. The said auto reached near SVKP College, Markapur, a tractor along with trailer bearing No. AP 26E 6590 and 6589 came from Markapur with neem logs at a high speed in a rash and negligent manner without blowing horn, dashed against auto, in which deceaed was traveling. As a result of which, the deceased received grievous injuries and while he was being shifted to Hospital, he died on the way to hospital. As such, the petitioners filed OP claiming compensation.

3. The respondents 1 and 2 were remained *ex parte*. The 3rd respondent before the Court below filed written statement stating that the petitioners are put to strict proof of age, occupation and health condition of deceased and also the manner in which accident occurred. The 1st respondent did not

possess valid driving license and tractor has no valid permit. There is no insurance coverage to the crime vehicle at the time of the accident. Petition is liable to be dismissed for non joinder of owner and insurer of the auto and that there is contributory negligence on the part of the driver of the auto. The claim of the petitioner is highly excessive.

4. The Tribunal after considering the evidence of P.W.1 and Exs.A1 to A6 and evidence of R.W.1 and Exs.B1 to B5, granted compensation of Rs.1,85,000/- to the petitioners along with interest @ 8% per annum from the date of petition till realization.

5. Learned counsel for the appellant submits that the deceased was not aged 20 years and the Tribunal deducted 1/3rd of his income towards personal expenses instead of ½, as there were only two dependents. He also submits that deceased was only 17 years old and that though he was not earning income, the Tribunal took Rs.15,000/- as income per annum without any basis, as such, the compensation has to be reduced by taking the above factors into consideration.

6. On the other hand, learned counsel appearing for the petitioners submits that the claimants are entitled for compensation of Rs.1,00,000/- towards loss of estate, love and affection and an amount of Rs.25,000/- towards funeral expenses as per the judgment of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others.**

7. As contended by the learned counsel for the appellant, as per the Judgment of the Hon'ble Supreme Court in **Sarla Verma (smt) and others v. Delhi Transport Corporation and another,** when the dependents are less than two, then half of the income should be deducted towards personal expenses, but the Tribunal had erroneously deducted only 1/3rd towards personal expenses. As per the Judgment of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others (supra),** an amount of Rs.1,00,000/- should be awarded towards loss of love and affection, Rs.1,00,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Even if deduction of ½ is made from the income of deceased for arriving at loss of income, if compensation on the other counts is to be granted as held in **Rajesh's case**, the question of reducing the compensation granted by Tribunal does not

arise. Tribunal has not taken into consideration the loss of future prospects of deceased. In view of above and also in view of the principle laid down in the aforesaid judgments of Hon'ble Apex Court, it cannot be said that granting of Rs.1,85,000/- towards compensation is excessive though Tribunal has deducted only 1/3rd towards personal expenses instead of ½. As such, I do not see any ground to reduce the aforesaid compensation and appeal is liable to be dismissed.

Accordingly, this Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this MACMA shall stand dismissed.

___________________________ **A.RAJASHEKER REDDY, J**

03.11.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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<u>Date: 03-11-2015</u>

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