HON'BLE SRI JUSTICE S.V. BHATT

M.A.C.M.A. No.1817 OF 2005

JUDGMENT:

Heard learned counsel for the appellants/claimants and learned standing counsel for 2nd respondent/insurance company.

The claimants in M.V.O.P. No.422 of 1999 in the Court of II Additional District Judge -cum- Motor Accidents Claims Tribunals, Nellore are the appellants. The appellants are the wife, children and parents of one Guvvala Venkateswarlu Reddy. The appeal is directed against the common order dated 30th November,2004. At the time of hearing, it is brought to the notice of this Court that the insurance company/2nd respondent did not file appeal challenging the common order dated 30th November, 2004.

The facts relevant for disposal of the appeal are as under:

The deceased Guvvala Venkateswarlu Reddy, it is alleged, was travelling in lorry bearing No.AP-27-T-2979. The lorry met with accident at 22.00 hours on Kaligiri-Kavali road at Peddapadu Village, Kaligiri Mandal, Nellore District. The deceased died on the spot. The offending vehicle is insured by the 2nd respondent. The 2nd respondent in the reply filed before the Tribunal stated that the lorry was not validly insured with the 2nd respondent company. As the deceased persons were travelling in lorry as gratuitous passengers, the insurance policy does not cover the risk of gratuitous passengers and allowing gratuitous passengers to travel in transport carrier is contrary to the terms and conditions of the policy. As regards the income, dependency etc., the 2nd respondent has called upon the claimants to prove the same.

The case of appellants/claimants is that the deceased was an agriculturist and he was earning a sum of Rs.5,000/- per month and on account of loss to estate etc., the claimants claimed a sum of Rs.6,50,000/-.

The Tribunal has framed the following issues for consideration:

i. Whether the alleged accident occurred due to the rash and negligent driving of the vehicle bearing registration No.AP-27-T-2979 by its driver?

ii. Whether the petitioners are entitled to compensation and if so to what amount and from which of the respondents?

iii. To what relief?

The 1st claimant was examined as PW.1 and on her behalf, Exs.A.1 to A.9 have been marked. The Tribunal while answering issue No.2, has determined the compensation as follows:

As against the claim of Rs.5,000/- per month, the Tribunal accepted the probable income of deceased per month as Rs.2,500/- and towards funeral expenses as against Rs.5,000/- granted Rs.3,000/-, towards pain and suffering granted Rs.15,000/- and in all granted compensation as follows:

"a) Compensation for loss of dependency Rs.3,40,000-00

b) Compensation for loss of estate, comprising

of loss of expectation of life, pain and suffering

and loss of amenities of the petitioners Rs. 15,000-00

c) Funeral and obsequies charges Rs. 3,000-00

d) Compensation for loss of consortium to

the 1st petitioner Rs. 10,000-00

Total Rs.3,68,000-00

Learned counsel for the appellants/claimants by placing strong reliance upon the decisions in **Syed Sadiq v. United India Insurance Co. Ltd.** and **Kalpanaraj v. T.N. State Transport Corporation** contends that the determination of deceased's income per month at Rs.2,500/- is completely arbitrary and even assuming that there is no material to evidence the income derived by the deceased in private employment or otherwise, the Court ought to have treated the income as Rs.4,000/- per month and granted 30% notional increase on the amounts so arrived at and ought to have applied '16' multiplier. The payment of Rs.10,000/- towards loss of consortium is contrary to the decision of the Apex Court in **Rajesh v. Rajbir Singh**.

Learned standing counsel Sri V.Sambasiva Rao by drawing the attention of the Court to the evidence of PW.1 and the legal effect of each one of the exhibits contends that the compensation fixed by the Tribunal is just and proper and does not warrant interference from this Court.

Now the point for consideration in the facts and circumstances of the case is whether the claim of enhanced compensation is tenable or not? and if so, what is the compensation to which the appellants are entitled to?

The appellants claim that the deceased was doing business in betel leaves and was earning Rs.5,000/- per month and the same was spoken to by PW.1/wife of deceased. However, in view of the facts and circumstances of the case, available oral evidence and to meet the ends of the justice, the Tribunal ought to have taken the income of the deceased at Rs.4,500/- per month, instead of Rs.2,500/- per month. In the absence of documentary evidence with regard to the age of deceased, the Tribunal has taken the age of the deceased as 32 years by relying on Exs.A.6-inquest report and A.7-post mortem certificate. As per the decision of the Apex Court in **Sarla Verma (Smt.) v. Delhi Transport Corporation,** the appropriate multiplier for the age of 32 years is "16". After deducting 1/3rd from the income of deceased towards his personal expenses, the monthly income of the deceased for arriving dependency would be Rs.3,000/-. Therefore, the dependency is determined and awarded at Rs.5,76,000/-(Rupees Five Lakhs Seventy Six Thousand only) (Rs.3,000x12x16). Since the deceased died at the age 32 years, it is just and proper to award Rs.50,000/-(Rupees Fifty Thousand only) towards loss of consortium to the

1st appellant-wife. Thus, the total compensation is determined at Rs.6,44,000/- (Rupees Six Lakhs Forty Four Thousand only) (i.e.Rs.5,76,000/- towards loss of dependency, Rs.50,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, pain and suffering and loss of amenities and Rs.3,000/- towards funeral expenses) with interest at 7.5% per annum on enhanced compensation from the date of petition till deposit in the Court.

The appeal is allowed. No costs.

Miscellaneous petitions, if any, pending in the MACMA shall stand closed.

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S.V.BHATT, J

Date: 05.11.2015

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