HON'BLE SRI JUSTICE S.V. BHATT

M.A.C.M.A. No.1578 OF 2005

JUDGMENT:

The petitioners in M.V.O.P. No.602 of 1999 in the Court of Motor Accidents Claims Tribunal-cum II Additional District Judge, Nellore, are the appellants. The appeal is directed against the Award dated 30.11.2004. The appellants claim enhancement of compensation from Rs.2,,32,000/- to Rs.3,00,000/-. At the time of hearing, learned counsel appearing for the parties inform that no appeal challenging the Award is filed by the insurance company.

The circumstances relevant for disposal of the appeal are as follows:

The 1st appellant is the wife of one Malakondaiah, appellants 2 to 4 are children of 1st appellant and Malakondaiah. On 27.06.1999, Malakondaiah boarded lorry bearing No.AP 27 T-2979 along with his vegetable bags (brinjal). At 22.00 hours, on 27.06.1999 due to the rash and negligent driving of the driver of the said lorry, it is alleged, Malakondaiah died along with another person covered in O.P.No.422 of 1999. The compensation is claimed by the appellants on the ground that the deceased was selling vegetables and was earning Rs.5,000/- per month.

The 2nd respondent firstly denied the liability to pay any compensation and called upon the appellants to prove that the deceased was doing business in vegetables, loss of estate, dependency etc.

The Tribunal having regard to pleadings, framed the following issues:

i. Whether the pleaded accident occurred causing the death of deceased and if so was it due to the fault of the driver of the lorry bearing No.AP-27- T-2979?
ii. Whether the lorry in question belongs to first respondent and stood insured with second respondent/Insurance Company by the date of the accident and if so whether the policy covers the risk of the deceased?
iii. Whether the petitioners are entitled to compensation and if so to what amount and from which of this respondents?
iv. To what relief?"

On issue No.1, it is held that the rash and negligent driving of the driver of lorry A.P.27 T-2979 resulted in the death of Malakondaiah, 1st appellant's husband and father of appellants 2 to 4. On issue No.2, the finding is in favour of appellants and against the 2nd respondent. On issue No.3, the Tribunal while accepting that the deceased was doing business in vegetables, declined to accept that the deceased was earning Rs.5,000/- per month. The finding on this aspect of the matter reads as follows:

> "In Ex.A.5 and A.10 documents (F.I.Rs.) and Ex.A.12-inquest report, it is clearly mentioned that the deceased –Malakondaiah boarded the lorry only with one bag of brinjals. There need not be any doubt to accept the claim of the petitioners that the deceased-Malakondaiah was doing vegetable business, but there is no positive evidence that he was earning Rs.5,000/- per month. In the circumstances of the case, a sum of Rs.1,500/- is assessed as monthly income of the deceased-Malakondaiah."

By determining the income of deceased at Rs.1500/- per month, after deducing 1/3rd therefrom and by applying 17 multiplier, the loss of dependency is arrived at Rs.2,04,000/-. The Tribunal awarded Rs.10,000/- towards loss of consortium to 1st appellant and a sum of Rs.3,000/- is awarded towards funeral expenses. The total compensation awarded to appellants is Rs.2,32,000/-. Hence the appeal.

Learned counsel for the appellants challenges the Award on two grounds. Firstly that even assuming that there is no direct evidence of deceased earning a sum of Rs.5,000/- per month still according to the view taken by the Apex Court, a person is expected to earn about Rs.4,000/- per month even he is in private employment.

Therefore, the contention of appellants that the notional valuation of deceased's income at 1500/- per month is illegal. Further 1/3rd deduction is unsustainable. Therefore, the learned counsel for the appellants prays for suitable enhancement under this head. Secondly, the learned counsel for the appellants by placing reliance upon decision in **Rajesh v. Rajbir Singh**[1] contends that the 1st appellant is entitled to Rs.1,00,000/- towards loss of consortium and granting Rs.10,000/- is unsustainable.

Learned counsel appearing for the respondent contends that Tribunal by taking a practical and realistic view of the assertion and denial of parties while accepting that the deceased was doing business, rightly determined the income at Rs.1500/- per month and no exception can be taken to such determination. Learned standing counsel submits that at any rate the compensation claimed by the appellants is Rs.3,00,000/-. Unless and until there is prayer and procedure is followed, this Court may not consider granting more compensation than what is claimed before the Tribunal.

Now the point for consideration is:
Whether the appellants are entitled for enhancement of compensation and if so, to what extent?

Having regard to the findings recorded by the Tribunal, I consider it appropriate to first take up the amount granted by the Tribunal towards loss of consortium to the 1st appellant. In **Rajesh**'s case (supra), it has been held that the spouse is entitled to a sum of Rs.1,00,000/- towards loss of consortium. At the time of demise, the age of Malakondaiah is presumed as 35 years and the age of 1st appellant will be around 30 years. The 1st appellant lost her husband even before entering the middle age. Therefore, award of Rs.10,000/- towards loss of consortium is unsustainable and accordingly the same is enhanced to Rs.80,000/- Therefore, the 1st appellant is entitled to Rs.70,000/- additional compensation under this head.

The definite case of appellants is that the deceased was doing business in vegetables and was earning some income. To apply the principle, relied upon by the appellants, at least there ought to be some evidence in this behalf. Further by reworking the compensation payable to the appellants, this Court has already granted the entire compensation claimed by them. Therefore, on the loss of dependency, the finding is upheld. Accordingly, the compensation is determined as follows:

Rs.2,04,000/- towards loss of dependency, Rs.80,000/- towards loss of consortium, Rs,.15,000/- towards loss of estate and Rs.3,000/- towards funeral expenses. The appellants claimed Rs.3,00,000/-, so the compensation is restricted to Rs.3,00,000/- (Rupees three lakhs only) with interest at 7.5% per annum on the enhanced compensation from the date of the petition till deposit in 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
Stp

[1] (2013) 9 SCC 54