

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.824 OF 2009

JUDGMENT:

This appeal is filed by the insurance company challenging the judgment and award dated 09.8.2007 passed in O.P. No.870 of 2004 on the file of the Motor Accidents Claims Tribunal-cum- District Judge, Nizamabad, wherein and whereby the Tribunal while awarding an amount of Rs.6,68,000/- to the petitioners as compensation as against a claim of Rs.20,00,000/-, fastened the liability on the insurance company.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 01.4.2004 while Mohd. Aleemuddin (hereafter referred to as, the deceased) boarded auto bearing No.AP 25T 9624 at Nallavelli to go to Nizamabad. When the auto reached Dharmaram limits, the driver of the auto had driven the same in a rash and negligent manner and dashed against the tractor-trailer which was parked on the left side of the road. The Station House Officer, Dichpally Police Station registered a case in crime No.46 of 2004 under Section 337 IPC. Due to the accident, the deceased sustained fracture to skull, ribs and other parts of the body. Immediately after the accident, the deceased was shifted to Government Hospital, Nizamabad where he succumbed to the injuries on 21.4.2004. By the time of accident, the deceased was aged about 30 years and used to earn Rs.20,000/- per month as building contractor-cum-masson. The petitioners are dependants on the income of the deceased. The auto bearing No.AP 25T 9624, which belongs to first respondent, was insured with second respondent with effect from 10.3.2004 to 09.3.2005. The respondent

Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.20,00,000/- to the petitioners.

4. The first respondent remained ex parte. The second respondent filed counter denying all the material averments made in the petition inter alia contending that the driver of the auto was not having valid and effective driving licence. Therefore, the second respondent is not liable to pay compensation to the petitioners. The present petition is not maintainable for non-impleading the owner and insurer of the tractor and trailer. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant.

5. Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident has taken place due to rash and negligent driving of auto bearing No.AP 25T 9624 by its driver?
- 2) Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
- 3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the second respondent, no oral evidence was let in but Ex.B1 was marked.

7. On appraising the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 25T 9624 and allowed the petition in part by awarding compensation of Rs.6,68,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation, directing the respondent Nos.1 and 2 jointly and severally to deposit the amount within one month from the date of the award. Feeling aggrieved by the judgment and award, the second respondent

– insurance company preferred the appeal.

8. Heard Smt. Ramani Jonna, learned counsel for the appellant-insurance company and Sri L.Dayakar Reddy, learned counsel for the respondent Nos.1 to 6-claimants.

9. The contention of learned counsel for the appellant is that the Tribunal committed grave error while determining the income of the deceased as Rs.4,500/- per month. She further submitted that in the absence of documentary evidence, the Tribunal has to take into consideration the notional income of the deceased only. ***Per contra***, learned counsel for the claimants submitted that the Tribunal has awarded just and reasonable compensation. He further submitted that the Tribunal has assigned cogent and valid reasons to its findings and therefore, it is a fit case to dismiss the appeal.

10. Now, the point that arises for consideration in this appeal is:

Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?

Point:

11. There is no much dispute between the parties with regard to the manner of the accident and the factum of the death of the deceased. A perusal of the record reveals that the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of auto bearing No.AP 25T 9624. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. Hence, I am fully agreeing with the findings recorded by the Tribunal on issue No.1.

12. The predominant contention of the learned counsel for the insurance company is that the Tribunal determined the income of the deceased as Rs.4,500/- per month without any material. As per the averments in the petition, the petitioner used to earn Rs.20,000/- per month. As per the testimony of P.W.1, her husband used to earn

Rs.20,000/- per month as building contractor. As per the testimony of P.W.2, the deceased used to earn Rs.15,000 to 20,000/- per month. The petitioners have not adduced documentary evidence to prove the income of the deceased. In Ex.A3, inquest panchanama, the avocation of the deceased is mentioned as building contractor. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the deceased may earn Rs.150/- per day even as a masson. Masson is a skilled worker. A skilled worker can earn more than an unskilled labour. The Tribunal or the court has to take into consideration the wages being paid to the skilled as well as unskilled labour. Even by attending to masson work, the deceased may earn Rs.4,500/- per month on an average. The Tribunal has not committed any illegality or irregularity while determining the income of the deceased as Rs.4,500/- per month.

13. The total number of claimants in this case is '6'. When the claimants are '6' in number, the Tribunal ought to have deducted $\frac{1}{4}^{\text{th}}$ (instead of $\frac{1}{3}^{\text{rd}}$) of the income of the deceased towards his personal expenses. For one reason or the other, the claimants have not filed appeal or cross-objections challenging the finding of the Tribunal. Therefore, it is not fair on the part of this court to interfere on this aspect. After deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses, the contribution to the family would come to Rs.3,000/-. The Tribunal applied appropriate multiplier '18' while determining loss of dependency. The loss of dependency comes to (Rs.3,000 X 12 X 18) Rs.6,48,000/-. The Tribunal granted an amount of Rs.15,000/- towards loss of consortium and an amount of Rs.5,000/- towards funeral expenses.

14. A perusal of the record reveals that the Tribunal awarded just and reasonable compensation to the claimants. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of learned counsel for the appellant that the amount of compensation awarded by the Tribunal under various heads is on higher side. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. Viewed from factual or legal aspects, the appeal is liable to be dismissed. Accordingly, the point is answered.

15. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.02.2015
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