

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No. 2097 of 2005

JUDGMENT:

The appellants are the claimants in M.V.O.P.No.149 of 2003 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge, Kakinada (for short 'the Tribunal'). The claim petition was filed for an amount of Rs.4,00,000/- for the death of one Rekhadi Lakshmi in a motor accident that occurred on 17.08.2002. It was stated in the petition that she along with one Malladi Satyavathi went to Yanam for medical check up. After completion of the medical check up, they boarded a bus at Yanam and got down at Koringa and when they were proceeding by walk to Pedda Boddu Venkatayapalem village from Koringa, a Majestic motor cycle bearing No.AP 5K 7827 driven by its driver in a rash and negligent manner hit the said Lakshmi. She was immediately shifted to Government General Hospital, Kakinada, where she died on the same day while undergoing treatment. She was aged about 40 years and earning Rs.5,000/- p.m. by selling dry fish. The 1st claimant is the mother and the 2nd claimant is the daughter of the deceased. The Tribunal framed the following issues:

"1) Whether the accident had occurred due to the rash and negligent driving of Hero Majestic Motor Cycle bearing No.AP 5K 7827 by the 1st respondent?"

2) Whether the petitioners are entitled for compensation? If so, to what amount and from which of the respondents?"

3) To what relief?"

Before the Tribunal, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked on behalf of the claimants. On behalf of the respondents, no oral evidence was adduced, but Ex.B.1 copy of

policy was marked by consent.

The Tribunal, on evidence, held that the accident occurred due to rash and negligent driving of the driver of the motor cycle bearing No.AP 5K 7827.

Coming to the compensation, the Tribunal did not believe the version of the claimants that the deceased was earning Rs.5,000/- to Rs.6,000/- p.m. by selling dry fish. On the basis of Ex.A.2 post mortem certificate, the Tribunal came to the conclusion that the deceased was aged about 40 years. The income of the deceased was nominally taken as Rs.900/- p.m., and after deducting 1/3rd thereof, Rs.600/- p.m. was taken as income. The loss of dependency was calculated by applying the multiplier of 15 at Rs.1,08,000/-. Besides the said amount, an amount of Rs.5,000/- was awarded towards transportation of dead body and funeral expenses, by award dated 05.01.2005. Seeking enhancement of the said compensation, the present appeal is filed.

The learned counsel for the claimants, relying on a decision in ***Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others***^[1], submitted that even if the Tribunal did not believe that the deceased was selling dry fish, the services rendered by the deceased as a home maker should have been taken into consideration. It is true that in case of non-earning ladies, the services of home maker should be taken into consideration and, accordingly, Rs.3,000/- p.m. is taken as the income for the services rendered by the deceased. Deducting 1/3rd thereof towards personal expenses, the contribution to the family comes to Rs.2,000/-p.m. Applying the multiplier of 15, the total compensation that can be granted comes to Rs.3,60,000/-. The Tribunal awarded an amount of Rs.5,000/- towards transportation of the dead body

and funeral expenses and the said amount should be enhanced by Rs.10,000/-. Thus, the petitioners are entitled for an amount of Rs.3,70,000/- and the award passed by the Tribunal is accordingly modified. The enhanced amount of compensation shall carry interest at 9% p.a. from the date of petition till the date of realization.

The Appeal is accordingly partly allowed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the appeal shall stand dismissed.

(A.RAMALINGESWARA RAO, J)

15th December, 2015
cbs

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