

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

M.A.C.M.A.No.1026 of 2005

JUDGMENT:

This Appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the award dated 28-01-2005, passed by the Motor Vehicles Accidents Claims Tribunal-cum-XXI Additional Chief Judge, Nampally, Hyderabad (for brevity 'the Tribunal'), in O.P.No.2587 of 2001, filed by the claimants-respondents 1 and 2 claiming compensation of Rs.2,50,000/- for the death of one Lingidi Yeshwant Rao (herein after referred to as 'the deceased'), who is son of the claimants-respondents 1 and 2, in a motor accident when he was going towards Secunderabad, a private bus, hired with APSRTC, bearing Regn. No.AP 10U 5596, came with high speed in a rash and negligent manner and dashed the deceased, due to which, the deceased received serious and fatal injuries and died on the spot.

2. Appellant is the 2nd respondent-insurer, R-1 and R-2 are the claimants, R-3 is R-1, owner of the offending vehicle and R-4 is R-3, APSRTC in O.P.No.2587 of 2001 on the file of the Tribunal.

3. Before the Tribunal, the 3rd respondent-who is the owner of the offending vehicle, remained *ex parte* and the appellant, which is the Insurer of the crime vehicle, filed the counter and contested the claim denying all the allegations made in the petition.

4. The Tribunal having held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, and taking into account the evidence of P.W.1, 1st respondent herein, and the documents marked under Exs.A-1 to A-5, awarded Rs.1,50,000/- towards future loss of dependency, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses, in all, the claimants were awarded total compensation of Rs.1,54,500/-. Aggrieved

by the same, the appellant-insurer filed the present appeal.

5. Heard the learned standing counsel for the appellant and the learned counsel appearing for the respondents 1 and 2 and perused the entire material available on record.

6. Learned standing counsel for the appellant contended that the Tribunal erred in fixing the liability excluding the 4th respondent-Corporation. Further, the Tribunal granted higher compensation in respect of future loss of dependency without following the prescribed manner and therefore, the compensation granted by the Tribunal may be reduced.

7. Learned counsel for the respondents 1 and 2 contended that the Tribunal has rightly awarded compensation after considering the oral and documentary evidence and therefore, there is no necessity for this Court to reduce the award granted by the Tribunal.

8. As seen from the record, it is no doubt true that due to rash and negligent driving of the driver of the offending vehicle, the accident occurred and due to which, the deceased died. The Tribunal awarded Rs.2,000/- towards funeral expenses, which, in my considered view, may not be interfered with and the same is confirmed.

9. So far as granting of Rs.1,50,000/- towards future loss of dependency is concerned, the Tribunal ought to have taken into consideration the age and the future career of the deceased. As contended by the learned counsel for R-1 and R-2, the deceased was a student, aged about 8 years, and is only one son to his parents. However, since the deceased was a non-earning member of the family, an amount of Rs.10,000/- per annum can be taken as notional income. If 1/3rd is deducted towards his personal needs, it comes to Rs.7,500/- per annum. According to the age of the deceased, the appropriate multiplier to be applied is '17'. Then the total loss of dependency can be granted Rs.1,27,500/- (7500/- (x) 17). Further, the Tribunal granted only Rs.2,500/- towards loss of estate, hence, it can be enhanced to Rs.10,000/-. The

Tribunal also did not award any compensation towards love and affection, hence, an amount of Rs.10,000/- can be awarded to the claimants towards love and affection. Therefore, the claimants are entitled to a total compensation of Rs.1,49,500/-(Rs.1,27,500/- (+) Rs.10,000/- (+) Rs.10,000/- (+) Rs.2,000/-) only (rounded off to Rs.1,50,000/-).

10. In the result, the appeal, filed by the insurer, is allowed in part holding that the respondents 1 and 2-claimants are entitled to only Rs.1,50,000/-, instead of Rs.1,54,500/-, as total compensation. The award in O.P.No.2587 of 2001, dated 28-02-2005, is modified accordingly. There shall be no order as to costs.

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December 23, 2010
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JUSTICE GHULAM MOHAMMED