HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.844 OF 2009

JUDGMENT:

This appeal is filed by the insurance company assailing the judgment and award dated 23.7.2008 passed in M.V.O.P. No.165 of 2005 on the file of the Motor Accidents Claims Tribunal–cum-V Additional District Judge, FAC VI Additional District Judge (Fast Track Court), Tirupati.

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 claim petition are briefly as follows: On 12.7.2004, at about 4.45 PM, C.Balakrishnaiah was standing on the road near Mallavaram. At that time, the driver of the car bearing No.AP 03V 5028 had driven the same in a rash and negligent manner and hit Balakrishnaiah. The accident occurred due to the rash and negligent driving of the driver of the car, against whom the Station House Officer, Renigunta Police Station registered a case in Crime No.95 of 2004 under Section 304-A IPC. Due to the, Balakrishnaiah (hereinafter referred to as, the deceased) sustained grievous injuries all over the body and died while undergoing treatment in Sri Venkateswara Institute of Medical Sciences, Tirupati. By the time of the accident, the deceased was aged about 57 years and used to earn Rs.7,639/- per month as conductor in Andhra Pradesh State Road Transport Corporation. The first petitioner is the wife and second petitioner is son of the deceased and they are dependants on the income of the deceased. The car, which belongs to the first respondent, was insured with the second respondent as on the date of the accident and therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.5,00,000/- to the petitioners with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the driver of the car was not having valid and effective driving licence as on the date of the accident and therefore, this respondent is not liable to pay compensation, if any, to the petitioners. The amount of compensation claimed by the petitioners, under various heads, is highly excessive

and exorbitant. Hence, the petition may be dismissed so far as this respondent is concerned.

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

1. Whether the deceased C.Balakrishnaiah, husband of 1st petitioner and father of 2nd petitioner died in the car accident that took place due to rash and negligent driving of the driver of the car bearing No.AP 03V 5028 on 12.07.2004?
2. What was the age and income of the deceased on the date of his death?
3. Whether the petitioners are entitled to compensation? If so, to what amount, from which of the respondents?
4. To what relief?

7. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the second respondent-Insurance company, no oral evidence was let in, but Ex.B.1 was marked.

8. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of driver of the car and allowed the petition in part by awarding compensation of Rs.4,48,340/- directing the respondent Nos.1 and 2 to pay the same jointly and severally with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the insurance company preferred the appeal.

9. Heard Sri B.Devanand, learned standing counsel for the appellant-insurance company and Sri A.Chandraiah Naidu, learned counsel for the claimants.

10. The contention of learned standing counsel for the insurance company is three fold: (1) the Tribunal committed error while arriving at a conclusion that the deceased used to earn Rs.7,790/- per month; (2) the Tribunal committed error while applying the multiplier without taking into consideration the age of superannuation of the deceased; and (3) the Tribunal ought to have considered the pension amount payable to the claimants while determining the loss of dependency. *Per contra*, learned counsel for the claimants submitted that there is no provision for deduction of pension received by the claimants while determining loss of dependency. He further submitted that the Tribunal has to take into consideration the salary of the deceased as on the date of the accident and apply the multiplier corresponding to the age of the deceased. He further submitted that there are no grounds to interfere

with the judgment and award passed by the Tribunal.

11. Now the point that arises for determination in this appeal is:

> *Whether the Tribunal is not justified in awarding total compensation of Rs.4,48,340/- to the claimants?*

Point:

12. As per the finding of the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of driver of the car bearing No.AP 03V 5028. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the car, which resulted in the death of the deceased.

13. The oral testimony of P.Ws.1 and 2 clearly reveals that the deceased was working as conductor and drawing a gross salary of Rs.9,660.90 per month and net salary of Rs.7,790/- per month by the time of his unfortunate death. The Tribunal has taken the income of the deceased at Rs.7,790/- per month and Rs.93,480/- per annum. After deducting Rs.40,000/- towards personal expenses of the deceased, the Tribunal assessed the contribution of the deceased towards his family members at Rs.53,480/- per annum. By the time of the accident, the deceased was aged about 57 years and therefore, the Tribunal has taken the multiplier ‘8’. The Tribunal arrived at a conclusion that the petitioners would be entitled to (Rs.53,480 X 8) Rs.4,27,840/- towards loss of dependency. The Tribunal also awarded Rs.1,000/- towards transportation charges, Rs.15,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The Tribunal awarded a total compensation of Rs.4,48,340/-. The claimants have not filed any appeal or cross-appeal challenging the quantum of compensation. Therefore, the quantum of compensation awarded by the Tribunal became final so far as the claimants are concerned.

14. The contention of learned standing counsel for the insurance company is that the Tribunal has erroneously taken the salary of the deceased as Rs.7,790/- per month and applied wrong multiplier of ‘8’ despite the age of superannuation of the deceased is 58 years. The further contention of the second respondent is that the

Tribunal ought to have deducted the pensionary benefits while determining the loss of dependency. No doubt, due to untimely death of deceased, the claimants might have received some amount from the employer of the deceased. The crucial question is whether the retrial benefits of the deceased has to be deducted from the amount of compensation awarded to the claimants / legal representatives of the deceased. Learned counsel for the claimants strenuously submitted that the Tribunal has to take into consideration the earning capacity of the deceased as on the date of the accident and apply suitable multiplier taking into consideration the age of the deceased.

15. To substantiate the argument, he has drawn my attention to **Vimal Kanwar v Kishore Dan**, wherein it was held that "*the provident fund, pension, insurance, any cash, bank balance, shares, fixed deposits etc., are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction"*.

In **K.R.Madhusudan v Administrative Officer**, regarding application of multiplier, the Hon'ble apex court held as follows:

> 14. In the appeal which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.

Similar view was expressed in **Jyoti Kaul v State of Madhya Pradesh**.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the Tribunal has not committed any error while taking the income of the deceased at Rs.7,790/- per month and applying the multiplier '8'. The quantum of compensation of Rs.4,48,340/- as awarded by the Tribunal is just and reasonable. There are no grounds much less valid grounds to interfere with the well considered judgment and

award of the Tribunal. The appeal lacks merits. Accordingly, the point is answered.

17. Hence, 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: 13.4.2015

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