HONOURABLE SRI JUSTICE S.RAVI KUMAR

M.A.C.M.A.No.137 of 2013

Dated 27-8-2016

Between:

The Cholomandalam M/s.General Insurance Company Ltd., represented by its Branch Manager, 2nd floor Dwaraka Nagar, Visakhapatnam.

..Appellant.

And:

Madakam Thammaiah and others.

..Respondents.

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JUDGMENT:

This appeal is preferred against order dated 28-7-2012 in M.A.T.O.P.No.954 of 2010 on the file of Motor Accidents Claims Tribunal-cum-5th Addl. District Judge (Fast Track Court), Kothagudem.

Respondents 1 and 2 herein filed application under Section 166 of Motor Vehicles Act claiming compensation of Rs.5,10,000/- for the death of their son Dileep Kumar in a motor accident.

Insurance Company i.e., appellant herein resisted the claim on the ground that driver of vehicle was not having valid driving licence at the time of accident and so also, there was no negligence on the part of driver of the lorry and accident was only due to negligence of the deceased himself and that the claim is high and excessive.

Tribunal on a consideration of oral and documentary evidence of both parties, granted Rs.5,10,000/- as prayed for and questioning the same, Insurance Company preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that tribunal erred in deducting only 1/3rd of annual income instead of deducting 50% towards personal expenses as per the settled law. He further submitted that tribunal erred in taking age of deceased into consideration in stead of taking mother's age, deceased being bachelor. He further submitted that Insurance Company questioned the award on these two grounds. He further submitted that as per the decision of *SARLA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER* ([1]) and *RESHMA KUMARI AND OTHERS Vs. MADAN MOHAN AND ANOTHER* ([2]), tribunal has to deduct 50% of the income towards personal expenses of the deceased in case of bachelors but the lower tribunal deducted only 1/3rd therefore, the same has to be rectified. He further submitted that multiplier 18 is taken as per the age of deceased as the deceased was bachelor, the age of mother has to be taken and the multiplier applicable to the age of mother has to be considered for calculating compensation and if these two are applied, the quantum of compensation granted by court below is high and excessive and the same has to be modified.

No arguments are advanced on behalf of claimants.

Now the point that would arise for my consideration in this appeal is whether the order of the tribunal is proper, legal and correct?

POINT:

As seen from the record, on 12-9-2009, the deceased and Y.Venkanna were returning on moped bearing No.A.P. 20R 1971 to their village Isukapadu and when they reached near Kurlakunta at about 6 P.M., a lorry bearing No.AP 37W 2577 came in a rash and

[1] 2009 ACJ 1298
[2] 2013 ACJ 1253

negligent manner in opposite direction and dashed moped due to which, deceased Dileep Kumar died on the spot while pillion rider, Venkanna sustained injuries. The claimants being parents contended that they are entitled for compensation of Rs.5,10,000/-. According to evidence on record, deceased studied I.T.I. and doing private electrical work and the claimants contended that deceased was earning Rs.300/- per day on private electrical work. But as there was no corroborating evidence for the income, tribunal notionally fixed the income of deceased at Rs.4,500/- per month. By taking that as monthly income, the yearly income was fixed at Rs.54,000/- and out of that, 1/3rd was deducted towards personal expenses of the deceased.

Now the objection of Insurance Company is that as the deceased was bachelor as per *SARLA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER* (1st cited) 50% of the total income has to be deducted towards personal expenses of the deceased.

Considering the above two decisions, the argument of advocate for appellants has to be accepted and compensation has to be calculated by deducting 50% of income towards personal expenses of the deceased, on doing so, income available for calculation is Rs.27,000/- per annum instead of Rs.36,000/-.

The other contention of the Insurance Company is that tribunal has taken multiplier of the deceased instead of taking multiplier applicable to age group of mother of the deceased. But in view of decision of Supreme Court in *SARLA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER* (1st cited), the age of deceased has to be taken and the objection of Insurance Company on this aspect is not tenable.

Now if the compensation is calculated by taking the income of the deceased at Rs.27,000/-, it comes to Rs.4,86,000/-. To this, a sum of Rs.5,000/- towards funeral expenses and a sum of Rs.5,000/- towards loss of estate as granted by tribunal are to be added. Thus, the total comes to Rs.4,96,000/- for which, the claimants are entitled.

For these reasons, appeal is partly allowed and the award of Rs.5,10,000/- is now reduced to Rs.4,96,000/- with the same rate of interest as granted by tribunal and Insurance Company shall deposit the balance amount within three months from the date of receipt of this order.

The appeal is accordingly partly allowed. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 27-8-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

M.A.C.M.A.No.137 of 2013

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Dvs