HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A.No.194 of 2006

JUDGMENT:

This appeal is arising out of the award passed in M.V.O.P.No.35 of 2002 on the file of Motor Accidents Claims Trinunal-cum- I Additional District Judge, Anantapur.

The appellant is the United Insurance Company Limited –respondent No.2 in the O.P. challenged the award passed by the Tribunal on various grounds.

The brief facts of the case are that on 28-02-2001 while deceased was going towards Sadaladinna Village, one lorry came in opposite direction bearing No.ATQ 579 dashed against him. Due to which, he sustained injuries in the said accident and he was shifted to Government hospital, Tadipatri and from there to Manipal Hospital, Bangalore, where he succumbed to injuries on 04-04-2001. The police, Tadipatri registered a case in Cr.No.28 of 2001 against the driver of the crime vehicle under Section 304-A IPC. The deceased was Managing Director of Pratap Stone Polishing Industry and he is earning Rs.16,000/- per month. On account of his death in the accident, the LRs of deceased have claimed compensation of Rs.8,00,000/-, whereas the Tribunal on consideration of the evidence has awarded compensation of Rs.7,22,400/-.

The appellant being aggrieved by the impugned award has come forwarded with the present appeal challenging the quantum of compensation awarded by the Tribunal.

Heard learned counsel for the appellant Sri E.Venugopal. Learned counsel for the respondents not present and his arguments are deemed heard.

The point for consideration in this matter is:

i) Whether the quantum of compensation awarded by the Tribunal is in accordance with law?

ii) Whether rate of interest awarded by the Tribunal at 9% is excessive?

iii) Whether there are any violation of terms and conditions of insurance policy?

Learned counsel for the appellant fairly submitted that he is not going to press on the ground of liability of the Insurance Company, in view of the reasons mentioned by the Tribunal in the award. Learned counsel mainly contended that income of the deceased was taken by the Tribunal at Rs.5,000/- per month is not basing on any evidence. The appellant has not produced any income tax returns of the deceased, to prove his income. There is evidence on record only to the effect that the deceased was working as Managing Director in Stone Polishing Industry and, was earning Rs.16,000/- per month. The Tribunal basing on the document Ex.A.3 came to the conclusion that deceased was earning Rs.5,000/- per month, without therebeing any documentary proof for his income. Therefore, learned counsel for the appellant submits that there is no proof for the income of the deceased.

As far as this contention is concerned, it is obvious that Ex.A.3 is the registration certificate of the Polishing Industry. It is relevant to extract para No.11 of the award of the Tribunal for the purpose of appreciating of evidence on record.

> "The next point to be considered is for how much amount the petitioners are entitled to claim compensation. According to the PW.1 that her deceased husband was earning Rs.16,000/- p.m. and he was the Proprietor of M/s.Pratap Stone Polishing Industries, Tadipatri and further he was also having landed property and on account of his death they have to engage a Manager to look after the factory giving salary of Rs.5,000/- per month and as they could not run the said factory it was closed. In this case, the copy of the income tax assessment is filed, but it is not marked on the ground that it do not contain the official seal of the Income Tax Department. However, Permanent Registration certificate of the Pratap Stone

> Polishing Industries issued by the Government of Industries is marked as the Ex.A.3 and it shows that the deceased was the proprietor of the said concern. That itself shows, that the deceased was the owner of the said concern."

The above observation of the Tribunal does not require any interference. The Tribunal has clearly observed that deceased was the proprietor of M/s.Pratap Stone Polishing Industries, Tadipatri. After his death, they engaged a Manager to look after the factory by giving salary of Rs.5,000/- per month and the Tribunal has also considered that even if minimum wages, are taken into consideration as cooli, he would be entitled to get some income. The Tribunal has reasonably considered the income of the deceased as Rs.5,000/- per month, keeping in view the fact that they have engaged a Manager to look after the factory by giving him salary of Rs.5,000/- per month. This fact clearly reveals that the Tribunal has correctly fixed the income of the deceased as Rs.5,000/- per month, which does not require any interference.

Learned counsel for the appellant submits that the Tribunal has awarded 9% interest, which is excessive and it is to be reduced. On consideration of the material available on record, interest awarded by the Tribunal appears to be on higher side. Therefore, it is reduced to 7.5% per annum from the date of petition till realization. On consideration of the material on record, the appeal is partly allowed.

In the result, the appeal is partly allowed. The award of the Tribunal is modified only to the extent of reduction of rate of interest from 9% to 7.5% per annum from the date of petition till realization. In consequence, miscellaneous petitions, if any, pending in this appeal shall stand closed. No order as to costs.

G. SHYAM PRASAD, J

23-12-2016
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