

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.NO.2471 OF 2005

JUDGMENT:

This appeal is preferred by the appellants-petitioners against the order, dated 07-12-2004 in M.V.O.P.No.993 of 2000 on the file of the IX Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Guntur (for short 'the Tribunal') seeking enhancement of compensation.

2. The appellants herein are the petitioners, whereas the respondents herein are the respondents before the Tribunal.

3. For the sake of convenience, the parties herein after will be referred to as they were arrayed before the Tribunal.

4. Petitioners herein filed the above O.P. claiming compensation of Rs.2,41,000/- consequent on the death of the husband of the 1st petitioner and father of the petitioners 2 and 3 namely Mahaboob Pasha (hereinafter referred to as 'the deceased') in a motor accident that occurred on 06-09-2000 at about 1.30 P.M., It is stated that while the deceased was going on his bicycle from Parecherla Junction to reach his village Thurkapalem along Guntur to Narasaraopet road and when he reached near Usha Poultry, a lorry bearing No.AP 7T 1458 driven by its driver came in opposite direction in a rash and negligent manner with high speed and hit the deceased, as a result of which, the deceased fell down from his cycle and the lorry ran over him. At the time of accident, the deceased was aged about 43 years and was in the business of old plastic articles and iron articles etc., and was earning Rs.100/- per day. Hence, the claim petition.

5. 1st respondent-owner of the lorry remained ex-parte and the 2nd respondent-Insurance Company filed counter denying the averments made in the petition. The driver of the crime vehicle does not have any valid driving licence at the time of accident to drive the vehicle. The claim of the petitioners is excessive and hence, prayed to dismiss the petition.

6. Basing on the above pleadings, the following issues were

settled for trial:

1. Whether the deceased died in the accident due to rash and negligent driving of Ashok Ley Land lorry No.AP. 7 T by its driver or not?

2. To what compensation amount the petitioners are entitled to and against whom?

3. To what order ?

7. On behalf of the petitioners, P.Ws. 1 to 3 were examined and got marked Exs.A1 to A5. On behalf of the 2nd respondent, no evidence either oral or documentary was adduced.

8. The Tribunal after considering the evidence on record, held that the accident was occurred due to rash and negligent driving of the lorry bearing No. AP 7 T 1458 by its driver.

9. Coming to the compensation, the Tribunal did not believe the claim of the petitioners that deceased was earning Rs.3,000/- per month by doing business in old plastic and iron articles and accordingly took the annual income of the deceased at Rs.15,000/- and after deducting one third thereof towards personal expenses and by applying multiplier 13, the Tribunal arrived loss of dependency at Rs.1,30,000/-. An amount of Rs.15,000/- was awarded towards loss of consortium and Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses. Thus in all, an amount of Rs1,62,000/- was awarded by the Tribunal, vide impugned order. Being not satisfied with the said compensation, the present appeal is filed by the petitioners.

10. Though there is no evidence with regard to avocation of the deceased, the deceased must be earning some amount for the purpose of maintaining the family. The Tribunal had taken annual income at Rs.15,000/-. Taking the future prospects, the notional annual income that had to be taken into consideration would be at least Rs.30,000/-. After deducting one third thereof, the annual amount would remain Rs.20,000/- and if appropriate multiplier 13 is applied to the same, the loss of dependency comes to Rs.2,60,000/-. To the said amount, Rs.50,000/- should be given for loss of consortium and Rs.10,000/- towards funeral expenses. In view of the above loss of dependency, the loss of estate is declined. Hence, the award of the Tribunal awarding Rs.1,62,000/- is enhanced to Rs.3,20,000/- and the enhanced amount shall carry interest at 9% p.a., from the date of petition till the date of

realisation., Since the claim was made for an amount of Rs.2,41,000/-, the amount above Rs.2,41,000/- shall be paid to the petitioners on payment of deficit court fee over and above the said amount.

11. Accordingly, the appeal is allowed. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 28-01-2016

Hsd