

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.M.A.NO.3820 OF 2003

JUDGMENT:

This appeal is preferred by the appellant-Insurance Company against the order, dated 05-03-2002 in O.P.No.1072 of 1998 on the file of the M.A.C.T.-cum- District Judge, Nizamabad (for short 'the Tribunal)

2. The appellant herein is the 2nd respondent, whereas the respondents 1 to 6 herein are the petitioners and the 7th respondent herein is the 1st respondent 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 filed the above O.P. claiming compensation of Rs.9,00,000/- for the death of one Kayama Sailoo (hereinafter referred to as 'the deceased') in a motor accident that occurred on 15-09-1998 at about 3.00 P.M., when he was travelling as pillion rider along with one Sherla Naresh on TVS Suzuki motor cycle bearing No. ABJ 1987 towards Kamareddy side and when they reached in the shivar of Gannaram village of Dichpalli mandal, a lorry bearing No. AP 25/T-30 driven by its driver came in opposite direction with high speed and dashed the motor cycle, as a result of which, the deceased died on the spot and his friend Sherla Naresh who was driving the vehicle sustained grievous injuries. On the date of accident, the deceased was aged about 30 years and earning Rs.6,500/- per month by doing milk vending business and he was also having agricultural lands. Hence, the claim petition.

5. The case of the claimants was contested by the respondents 1 and 2.

6. Basing on the pleadings, the Tribunal framed an issue with regard to entitlement of the petitioners for compensation.

7. On behalf of the petitioners, P.Ws. 1 and 2 were examined and Exs.A1 to A9 were marked. On behalf of the respondents, no evidence was adduced except marking Ex.B1 copy of policy by consent.

8. On the basis of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the lorry by its driver.

9. The Tribunal noticed that the deceased was doing milk business and took the monthly income at Rs.3,500/-. After deducting one third towards personal expenses and by applying multiplier 18, the Tribunal arrived loss of dependency at Rs.5,04,000/-. Besides that, an amount of Rs.15,000/- was awarded towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.15,000/- towards loss of consortium. Thus in all, an amount of Rs.5,36,500/- was awarded by the Tribunal vide impugned order.

10. Challenging the said order, this appeal is filed on the ground that the income of the deceased was taken without proper evidence, that the multiplier applicable is 16 instead of 18 and there is no involvement of the lorry in the accident and the accident occurred due to involvement of some unknown lorry.

11. Obviously, the above pleas were not taken before the Tribunal and the Tribunal on the basis of oral and documentary evidence passed the award as aforesaid. Though the multiplier 18 for a person of 30 years is wrong, the claimants are entitled for higher amount towards consortium and towards funeral expenses. There are six claimants who are depending on the deceased. In the said circumstances, one third of the monthly income should not have been deducted towards personal expenses. Taking all the facts into consideration, it cannot be said that the amount of Rs.5,36,500/- awarded by the Tribunal is not just. In view of the same, the appeal fails and is liable to be dismissed.

12. Accordingly, the appeal is dismissed confirming the order, dated 05-03-2002 in O.P.No.1072 of 1998 passed by the Tribunal. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 03-02-2016

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