HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2372 OF 2009

JUDGMENT:

Respondent No.2, The National Insurance Company Limited, Anantapur, in M.V.O.P. No.196 of 2005 preferred the present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act 1988 (for short 'the Act'), aggrieved over the order and decree therein dated 29.12.2008 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Kadapa (for short 'Tribunal'), whereby and whereunder, the compensation of Rs.9,20,000/- awarded for the death of one Tirumalasetty Subbarayudu, who was working as Excise Constable when the accident took place resulting in his death eleven (11) days after the accident while undergoing treatment in C.M.C., Vellore.

2. Since the fact-situation is not in dispute as to the manner in which the accident had taken place, there is no need to refer to the relevant details.

3. Heard Sri A. Veeraswamy, learned counsel for the appellant (insurer), and Sri Karri Murali Krishna, learned counsel for respondent Nos.1 to 5 - petitioners.

4. Despite service of notice, respondent No.6 - respondent No.1, owner of the lorry bearing No.TN-29-P-8367 that involved in the accident, has not entered appearance.

5. For the sake of convenience, the parties are hereinafter referred to as they arrayed in the O.P. before the Tribunal.

6. The Tribunal having framed relevant issues, examined PWs.1 and 2 and marked Exs.A-1 to A-9 on behalf of the petitioners who are legal heirs of the deceased being his wife, children and parents; and none examined and no documents were filed on behalf of the insurer which alone contested the claim.

7. The Tribunal recorded findings in favour of the petitioners. Concerning compensation determined by it, the Tribunal has taken the contents of Ex.A-8, salary certificate of the deceased which shows that he was drawing Rs.7,043/- per month in 1999 and on revision, he would have drawn Rs.8,357/-, and taken Rs.6,500/- net monthly income which works out to Rs.78,000/- (Rs.6,500/- x 12) per annum and deducted 1/3rd therefrom, arrived the contribution at Rs.52,000/- (Rs.78,000/- - Rs.26,000/-) per annum, applied multiplier 15, treating the deceased as 40 years old, and worked out the loss of dependency at Rs.7,80,000/- (Rs.52,000/- x 15); that apart, the Tribunal has awarded Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses, Rs.1,15,000/- towards medical expenses spent by the petitioners, Rs.2,000/- towards extra-nourishment and just Rs.3,000/- towards loss of consortium so far as petitioner No.1 is concerned and awarded interest at the rate of 6% per annum on the total compensation of Rs.9,20,000/- and apportioned it among the petitioners

8. The aforesaid order is under challenge in the present appeal on the main ground that the compensation determined by the Tribunal is excessive and exorbitant and multiplier factor '15' ought not to have applied deriving it from Schedule - II to Section 163-A of the Act as the claim was laid under Section 166 of the Act and thereby sought to set aside the order and decree under challenge.

9. The main submission of the learned counsel for the insurer is that the postmortem report - Ex.A-6 would reveal that death of the deceased was due to pneumonia and, therefore, according to the learned counsel, the Tribunal went wrong in overlooking the said fact and upholding the claim by awarding the aforesaid amount.

10. When the fact-situation is not disputed leading to the injuries sustained by the deceased, more particularly, when the driver of the lorry that caused the accident was even clutched for the offence punishable under Section 304-A of the Indian Penal Code, certainly, none of the factors in postmortem report can be taken into consideration to accede to the stand taken by the insurer.

11. This apart, the Tribunal assigned cogent reasons in accepting the stand of the petitioners observing that the attack of pneumonia is not remote to the injuries sustained by the deceased and that the death of the deceased suffering from pneumonia is an incidence of the injuries sustained by the deceased and thus, death of the deceased was on account of the injuries sustained by the petitioner

in the accident. Even, when independently examined, Ex.A-2, wound certificate issued by the Government Hospital, Chittoor, shows that there has been grievous injury to the abdomen of the deceased in the accident and when his condition became serious, he was referred to CMC Hospital, Vellore, Chennai, as could be seen from Ex.A-9, and, he died while undertaking treatment continuously from 18.01.2004 on which day the accident has taken place till 11.02.2004 on which date his death occurred. Therefore, it cannot be said that mere non-examination of the doctors to prove medical bills under Ex.A-9, would disentitle the petitioners of the medical expenses of Rs.1,00,000/- granted by the Tribunal. Even the stand taken by the insurer that death of the deceased was on account of pneumonia rules out the proximate cause being the injuries sustained by the petitioner in the accident also, would not merit. The Tribunal, in fact, has not looked at future prospects and even the Tribunal has taken net income of the deceased and not the gross income; of course, referring to the law in vogue then and even the interest awarded by the Tribunal is only at 6% per annum which appears to be on lower side.

12. Hence, viewed from any angle, the compensation of Rs.9,20,000/- awarded by the Tribunal cannot be construed as excessive or exorbitant. Thus, there is no merit in the appeal.

13. Therefore, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

November 23, 2016.
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