HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.406 of 2005
and
Cross-Objections (SR).No.29587 of 2005

JUDGMENT :

Assailing the order and decree dated 27.12.2004 in O.P.No.537 of 2001 passed by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Asifabad, Adilabad District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.43,900/- was awarded towards compensation with interest at 9% per annum, as against the claim of Rs.80,000/- made under Sections 166(1)(a) and 163-A of the Motor Vehicles Act, 1988, for the death of the mother of the respondents/petitioners, by name Smt. Katikenapally Ashamma, in a road accident, the sole respondent, who is the owner-cum-driver of the offending vehicle i.e., Scooter, has preferred the instant Civil Miscellaneous Appeal, contending that the amount granted by the Tribunal as arbitrary and excessive.

2. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.537 of 2001 before the Tribunal.

3. The facts, in brief, are that on 29.07.1998 at 4.30 p.m., while the deceased, Smt. K. Ashamma, mother of the petitioners, was about to cross the road in front of her house at Tallagurijala village, to answer calls of nature, the offending Scooter bearing registration No.AP-1/A-8110, driven by the respondent at high speed and in a rash and negligent manner hit the deceased due to

which she sustained severe fatal injuries to head, waist and other parts of the body and fell down on the road. Immediately, she was shifted to the Government Hospital, Bellampally, where she succumbed to the injuries, while undergoing treatment. The Station House Officer of Tallagurijala Police Station, registered a case in Crime No.71/1998 for the offence punishable under Section 304-A of I.P.C., against the respondent and charge sheet was laid in C.C.No.271 of 1998 on the file of the Judicial First Class Magistrate, Asifabad. The petitioners, who are the sons of the deceased, claiming that they were dependent on the earnings of the deceased-mother at Rs.1,500/- per month by doing coolie work, sought a sum of Rs.80,000/- towards compensation. The respondent, who is the driver-cum-owner of the offending scooter, resisted the claim by filing counter denying claim of the petitioners that the deceased was aged 60 years and contending that she must be having 70 years and she cannot be construed as an earning member, sought for dismissal of the claim.

4. Basing on the said pleadings, the following issues were framed as to the responsibility of the accident.

> "(1) Whether the deceased died in the accident occurred on 29.07.1998 due to rash and negligent driving of vehicle bearing No.AP-1/A-8110 by its driver?
> (2) Whether the petitioners are entitled to any compensation? If so, to what amount and against whom?
> (3) To what relief?"

5. During enquiry, petitioner No.3 examined himself as P.W.1, and marked Exs.P-1 to P-4, whereas the respondent

himself was examined as R.W.1, but no documents were marked on his behalf.

6. On appreciation of evidence on record, the Tribunal has recorded a finding that due to rash and negligent driving of the vehicle by the respondent, the accident had occurred and accordingly answered Issue No.1 in favour of the petitioners and against the respondent. On Issue No.2, having elaborately dealt with the stand taken by the petitioners as well and the stand of the respondent, considering that the deceased must be earning a sum of Rs.1,200/- per month and after deducting 1/3rd i.e., Rs.400/- towards self-maintenance and another sum of Rs.400/- towards her personal expenses, including medical expenses, the balance amount of Rs.400/- per month i.e., Rs.4,800/- per annum (Rs.400 x 12) was taken as contribution and by taking the age of the deceased as 60 years on the date of accident, applied the multiplier '8' and arrived at Rs.38,400/- towards loss of future earnings of the deceased. Further, the Tribunal has granted a sum of Rs.500/- towards transport charges, Rs.1,000/- towards funeral expenses, Rs.4,000/- towards pain and suffering, thus, making a total compensation of Rs.43,900/- with interest @ 9% per annum from the date of petition till the date of realization.

7. It is the aforesaid order, which is under challenge in the instant appeal preferred by the Driver-cum-owner of the offending Scooter, contending in the grounds of appeal, that the Tribunal went wrong in giving a finding on issue No.1 against the respondent though, the rash and negligent driving was not established by the petitioners. It is stated that the deceased was

only a house wife and aged above 70 years and, therefore, arriving her monthly income at Rs.1,200/- is without any basis, that the respondent was acquitted in the criminal case and, therefore, sought to set aside the order and decree passed by the Tribunal.

8. On the other hand, the petitioners have filed cross-objections in XObj.(SR).No.29587 of 2005 under Order XLI Rule 22 of C.P.C., stating therein that the Tribunal, somehow, went wrong in deducting 1/3rd of Rs.1,200/- towards self-maintenance and in further deducting Rs.400/- towards personal and medical expenses, and also stated that the Tribunal ought to have granted (i) Rs.5,000/- instead of Rs.1,000/- towards funeral expenses; (ii) Rs.1,000/- instead of Rs.500/- towards transport charges, and hence sought to grant the balance amount of Rs.36,100/- (Rs.80,000 – Rs.43,900/-).

9. Heard Sri H. Venugopal, learned counsel for the appellant/respondent, as well as Sri T. Ramulu, learned counsel for the respondents/cross-objectors and perused the impugned order.

10. During the course of arguments, it is brought to the notice of this Court that the respondent has not agitated in the counter in O.P.No.537 of 2001 that the petitioners cannot be construed as dependants on the deceased. Since the said plea was not raised in the O.P. before the Tribunal, the same cannot be dealt with in this appeal. Though, the petitioners cannot be construed as totally dependents on the deceased, since they are sons and family members of the deceased, the same cannot be sidelined and keeping in view the same, the finding recorded by

the Tribunal deducting $1/3^{rd}$ of monthly gross income towards self-maintenance and another $1/3^{rd}$ towards personal expenses, though appear to be reasonable, the said amount is taken to be maintained and the net income of Rs.4,800/- per annum arrived by the Tribunal can be viewed as the value of the services rendered by the deceased-mother of the petitioners. Therefore, the amount of Rs.38,400/- arrived at by the Tribunal by applying the right multiplier '8' to the said net income of Rs.4,800/- is maintained. So far as the funeral expenses are concerned, the Tribunal ought to have granted Rs.5,000/-. Therefore, instead of Rs.1,000/- granted by the Tribunal towards funeral expenses, the same is enhanced to Rs.5,000/-. So far as the transport expenses of Rs.500/- granted by the Tribunal are concerned, the same is enhanced to Rs.2,000/-. The Tribunal, somehow, granted a sum of Rs.4,000/- towards pain and suffering and the same is ordered to be maintained.

11. It is to be noticed that even under 'No fault liability', the Statute provides for payment of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988. However, the petitioners have chosen to file appeal under the provisions of Section 163-A of the said Act. The compensation claimed by the petitioners is for a sum of Rs.80,000/-, which is very meager. If the age of the mother of the petitioners is taken as 60 years and multiplied with multiplier '8', the notional income would work out to more than the amount granted by the Tribunal even the amount provided by the Statute under 'No Fault Liability'. Therefore, the amount of Rs.80,000/- as prayed for by the claimants is granted with interest @ 9% per

annum on Rs.43,900/- and @ 7.5% per annum on the balance amount of Rs.36,100/- from the date of the petition till realization.

12. Accordingly, this Civil Miscellaneous Appeal filed by the owner-cum-driver of the offending vehicle is dismissed and the cross-objections (SR).No.29587 of 2005 filed by the respondents/claimants are allowed enhancing the amount of compensation from Rs.43,900/- to Rs.80,000 (Rupees eighty thousand only) with interest @ 9% per annum on Rs.43,900/- granted by the Tribunal and @ 7.5% per annum on the balance amount of Rs.36,100/- from the date of the petition till realization. There shall be no order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

04.02.2016.
Msr

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