THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No.287 of 2005

JUDGMENT:

This appeal is preferred by the third respondent - insurance company in M.V.O.P.No.36 of 2002 on the file of the Court of VI Additional District Judge, Visakhapatnam (for short, Tribunal).

2. The said MVOP was filed by the legal representatives of the deceased, B.Venkata Rao, who is the husband of the first respondent, father of respondents 2 and 3 and son of respondents 4 and 5 herein claiming compensation of Rs.12,00,000/- for the death of the deceased in a motor accident that occurred on 03.10.2001. In the MVOP, they stated that on 03.10.2001, the deceased was going along with his business colleagues from Visakhapatnam to Kovvuru in a taxi bearing No.AP31W 3042, and when they reached near Dharmavaram Village, the right tyre of the car got punctured and they stopped the car at the extreme left side margin of the road. While the taxi driver was changing the wheel, the deceased was standing by the side of the car and then a lorry bearing No.ABK 9995 came in a high speed in a rash and negligent manner on extreme right side and dashed the stationed car and ran over the deceased, as a result of which, he died on the spot. He was aged about 35 years and was doing jaggery business in Kovvur. He also owned cars and used to do taxi business. Apart from that he was a class-IV contractor in Visakhapatnam Municipal Corporation. He was earning Rs.12,000/- per month from all the said business activities.

3. The case was contested by the appellant. It filed a counter stating that the deceased was in a drunken state and slept across the road while changing the wheel and thus he contributed to the cause of the accident.

4. The Tribunal framed the following issues.

> "1. Whether the accident occurred due to the rash and negligent driving of the lorry bearing No.ABK 9995 driven by its driver?

2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom of the respondents?

3. To what relief?"

5. The first claimant (first respondent herein) was examined as P.W.1 and examined the eye witness as P.W.2 and got marked Exs.A.1 to A.13 on behalf of the claimants.

6. The Tribunal, on the basis of the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.ABK 9995. Regarding the income of the deceased, though evidence was let in for an amount of Rs.12,000/- per month, the Tribunal took the monthly income as Rs.7,000/- on the basis of the documentary evidence available before it. From the annual income of Rs.84,000/-, 1/3rd was deducted towards personal expenses and applying the multiplier of 17, the Tribunal arrived at Rs.9,52,000/- towards loss of contribution to the family. Besides the said amount, an amount of Rs.10,000/- was awarded towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.2,500/- towards funeral expenses. Thus, the Tribunal awarded a total amount of Rs.9,74,500/-, by its award dated 19.02.2014. Challenging the same, the present appeal is preferred by the insurance company.

7. The learned counsel for the appellant submits that there is no evidence for the monthly income of Rs.7,000/- and the proper multiplier in the case is only 16. But, in view of the recent trend in the decision of the Supreme Court, even in respect of non-salaried employees, there must be some enhancement in the income, based on the future prospects. Though evidence was let in for an amount of Rs.12,000/-, Rs.7,000/- was taken on the basis of the fluctuating income tax returned filed by the claimants. It is common knowledge that the income tax returns will not reflect the correct income. The deceased was in jaggery

business and a class-IV contractor in Municipal Corporation, Visakhapatnam. Exs.A.12 and A.13 show that the deceased owned two cars which were let out for travel business. Taking all these aspects into consideration, the fixation of income at Rs.7,000/- per month cannot be said to be on a higher side. But, in view of the number of members of the family who are dependants on him, the deduction of 1/3rd towards personal expenses is wrong and it should be only 1/4th. The loss consortium of Rs.10,000/- and amount of Rs.2,500/- towards funeral expenses also need enhancement.

8. Hence, taking all these aspects into consideration, the award of Rs.9,74,500/- calculated as above by the Tribunal does not appear to be incorrect and this Court feels that the amount awarded by the Tribunal, by its award dated 19.02.2004, is just and proper in the facts and circumstances of the case.

9. The appeal is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 25.01.2016
TJMR