HONOURABLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.144 OF 2006

JUDGMENT:

This appeal is arising out of award dated 20th May, 2005 in O.P.No.668 of 2001 on the file of Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, L.B.Nagar, Ranga Reddy District.

The appellants 1 to 5 are the wife, two sons and two daughters of the deceased G.Narasimha. They claimed compensation of Rs.2,00,000/- on account of death of G.Narasimha in a motor vehicle accident occurred on 23-5-2001.

The appellants filed this appeal against A.P.S.R.T.C. for enhancement of quantum of compensation awarded on account of death of G.Narasimha.

The brief facts of the case of the appellants are that on 23-5-2001 at about 8.35 P.M., while the deceased G.Narasimha was waiting for a bus at Rathifile Bus Stand Complex along with his friend one S.Ramesh, one A.P.S.R.T.C. Bus bearing No.A.P.9 Z 9451 came and stopped at route No.16-A bus stop. The deceased while intending to board the bus, suddenly another R.T.C. bus bearing No.AAZ 9815 came in a rash and negligent manner at high speed and dashed against him. The deceased received multiple injuries and he was shifted to Gandhi Hospital, Secunderabad. He succumbed to injuries received in the said accident. The police, Gopalapuram registered a case in Cr.No.116 of 2001 under Section 304-A of I.P.C.

against driver of A.P.S.R.T.C. The appellants have claimed compensation of Rs.2,00,000/- on account of death of the deceased.

The Respondent-A.P.S.R.T.C. filed counter before tribunal stating that the deceased while intending to board the bus fell down on the road and received injuries. There was no negligence or rashness on the part of the driver of the bus and therefore, the appellants are not entitled to claim any compensation.

The tribunal on a consideration of evidence of the witnesses P.Ws.1 to 3 and documents Exs.A.1 to A.6 held that the accident occurred due to rash and negligent driving of the driver of R.T.C. bus. On a consideration of the age of the deceased and on a consideration of the fact that the deceased was 55 years old by the date of accident when he was working in a private company, the tribunal fixed his income and taken his monthly income at Rs.1,500/- per month and calculated the compensation and awarded Rs.63,240/- as against the claim of the appellants at Rs.2,00,000/-.

The appellants being aggrieved by the quantum of compensation awarded by the tribunal has filed this appeal for enhancement of compensation.

The point for consideration in this matter is whether there are sufficient grounds for enhancement of compensation and whether the tribunal has awarded the compensation taking into consideration the correct income of the deceased and applied correct multiplier in awarding compensation of Rs.63,240/-?

Heard the arguments of the learned counsel for the appellants and the respondent and perused the material on record.

This is a case of motor vehicle accident.

The learned counsel for the appellants submitted that the tribunal has not considered the correct multiplier for calculating the income of the deceased. The tribunal has also not considered the correct income of the deceased at Rs.3,500/- per month but instead of that, the tribunal had taken the notional income of Rs.1,500/- per month.

The learned counsel for the respondent submitted that the multiplier applied by the tribunal is correct and there is no need to interfere with the award passed by the tribunal in awarding compensation on account of death of deceased Narasimha.

At the out set, it is obvious that the case of death of one Narasimha in a motor vehicle accident due to rash and negligent driving of the driver of the A.P.S.R.T.C. is proved. The age of the deceased at the time of death was 55 years. The dispute is only in respect of the application of multiplier and income of the deceased. The tribunal has taken income of Rs.1,500/- per month considering the deceased as coolie by profession.

Learned counsel for the appellants submitted that the minimum income of the deceased can be taken into consideration as Rs.3,000/- per month as P.W.1 has stated in his evidence that the deceased was earning Rs.3,500/- per month by working in a private company. The appellants have relied on a decision of this court reported in *SHIVARAM CHOWDARY vs. THE ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS*

MANAGING DIRECTOR, HYDERABAD ([1]) wherein this court has considered the income and awarded compensation.

It is held as follows:

> *"It has come in the evidence that the claimant is a cobbler in profession and he was having a shop and manufacturing chappals, shoes, leather articles etc., The accident took place in the year 1988 and the claimant was a resident of Sadasivapet, a Municipality in Medak District. Having regard to all these attending circumstances and the place in which he was carrying on his avocation, taking the monthly income of the claimant at Rs.600/- is on a lower side and the income of the claimant as on the date of the accident must not have been lesser than Rs.1,500/-."*

Therefore, the income of the deceased can be taken into consideration of Rs.3,000/- per month for awarding compensation in this matter.

The learned counsel for the appellants also submitted in a decision reported in *SARLA VERMA & ORS Vs. DELHI TRANSPORT CORP.& ANR* reported in CIVIL APPEAL No. 3483 OF 2008 (Arising out of SLP [C] No.8648 of 2007), the multiplier applicable to the age of deceased is '11'. As per the schedule in the above decision, the multiplier applicable between the age group of 51 to 55 years is '11' as held in para 21 of the judgment. Therefore, the multiplier '11' can be taken in this case instead of the multiplier '4.27' applied by the tribunal.

It is obvious that the income of the deceased was true by the evidence of P.W.3 by producing a certificate Ex.A.6 in his evidence. The tribunal did not properly appreciate the certificate issued by P.W.3 on the ground that he does not know the contents of the

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[1] 1996 (1) ALT 252

certificate and signed the certificate without knowing its contents. It is appropriate to refer the contents of the certificate as under:

> *"This is to certify that Shri G.Narasimha son of Sri Late Balaiah, working in our organization as a supervisor since 1998, 6th June, still he is continuing in our firm as supervisor"*

There is no material on record or in the judgment to show that the said certificate is disproved by any cogent and consistent evidence. Therefore, the tribunal arriving at a conclusion with regard to the notional income of Rs.1,500/- per month of the deceased cannot be taken into consideration. The notional income arrived by the tribunal is not even in accordance with the standard of minimum wages as fixed by this Court in ***Machineni Rama Devi and others Vs. M. Satyanarayana and another***[2], relying on the decision of the Supreme Court in ***Lakshmi Devi and others Vs. Mohd. Tabbar and another***[3], fixed the income of a deceased worker working in an unorganized sector, where there can be no evidence of the wages paid by them, as Rs.3,000/- p.m. Therefore, the income of deceased is taken as Rs.3,000/- p.m.

On a consideration of the material on record, the income of the deceased is taken into consideration as Rs.3,000/-per month. Out of Rs.3,000/-, 1/3rd has to be deducted towards his personal expenses and after deduction it comes to Rs.2,000/-. Therefore, the annual income of the deceased comes to Rs.24,000/- (Rs.2,000/- x 12 = Rs.24,000/- per annum). Multiplier applicable to the age of the deceased as per the schedule is '11'. The annual income of the

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2 2013 (6) ALD 178
3 2008 (3) ALD 129 (SC)

deceased is Rs.24,000/-. If the multiplier '11' is applied, it comes to Rs.2,64,000/-. Apart from that, the tribunal has awarded Rs.10,000/- towards consortium and Rs.2,000/- towards funeral expenses. Therefore, the petitioner is entitled to a compensation of Rs,2,76,000/- (Rs.2,64,000/- + Rs.12,000/- (Rs.10,000/- + Rs.2,000/) = Rs.2,76,000/-).

Since the appellants have claimed compensation of Rs.2,00,000/- and he has not made any amendment for enhancement of compensation, the claim of the appellants is restricted to Rs.2,00,000/-.

Having regard to the facts and circumstances of the case, the compensation awarded by the tribunal is enhanced from Rs.63,240/- to Rs.2,00,000/- with interest at the rate of 9% p.a., from the date of the petition, till realization.

In the result, the appeal is allowed by awarding compensation of Rs.2,00,000/- with proportionate costs and interest at the rate of 9% p.a., from the date of the petition till the date of realization. The respondent is directed to deposit the balance amount out of Rs.2,00,000/- awarded within three months from the date of this order. The appellants are permitted to withdraw half of the amount deposited immediately after its deposit; the balance amount shall be withdrawn by the appellants after the expiry of the appeal time. The appellants are permitted to withdraw the amount in proportion as fixed by the tribunal.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE G.SHYAM PRASAD

Dated 11-11-2016.
Dvs.

HONOURABLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.144 OF 2006

Dated 11-11-2016.

Dvs