HONOURABLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.140 OF 2006

JUDGMENT:

This appeal is arising out of award dated 14th October, 2005 passed by IV Additional Metropolitan Sessions Judge, Hyderabad-cum-XVIII Additional Chief Judge, Hyderabad.

The appellants are the wife and daughter of the deceased who filed O.P.No.1853 of 2003 under Section 166 of M.V.Act claiming compensation of Rs.15,00,000/- on account of the death of the deceased.

The tribunal awarded Rs.7,35,700/-with interest at 7.5% p.a., from the date of petition till realisation.

Being aggrieved by the quantum of compensation as less than quantum of compensation claimed by the appellants, this appeal has been preferred.

The appeal is filed against respondents 1 and 2. The claim against Respondent No.1 has been dismissed for default vide court order dated 20-4-2016. The learned counsel for the second respondent-National Insurance Company has not appeared before this court and advanced any arguments.

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

The point for consideration in this matter is whether the quantum of compensation awarded by the tribunal is not in accordance with provisions of M.V.Act.?

The brief facts of the case are that on 27-5-2003, while the deceased and friends were going on their vehicle bearing No.AP 9J

315 from Malkaj Giri to Ongole and when they reached National High Way 9, Hayathnagar RTC colony, one lorry bearing No.MP 09 KB 7264, came at a high speed in a rash and negligent manner and dashed against the vehicle of the deceased. As a result, the deceased has received grievous injuries and he was shifted to Kamineni Hospital where he succumbed to injuries. The Police, Hayathnagar registered a case in crime No.208 of 2003 against the driver of the lorry. The deceased was a sole bread winner of the family and he is earning an income of Rs.9,081/- per month and he was 45 years old at the time of accident. The appellants have lost love and affection of the deceased due to his sudden death due to rash and negligent driving of the driver and they have claimed against respondent No.1, the owner of the lorry and respondent No.2 injured of the lorry an amount of R.15,00,000/-.

First respondent owner of the vehicle had remained exparte before the tribunal and second respondent had filed counter denying the allegations in the petition stated above. The respondent disputed the age and income of the deceased and also denied the rash and negligent driving of the driver of the vehicle. He also denied spending of Rs.2,00,000/- towards medical expenses of the deceased and contended that the compensation claimed is highly excessive and sought for dismissal of the petition.

The tribunal on a consideration of evidence of witnesses P.Ws.1 to 4 and documents Exs.A.1 to A.14 filed on behalf of appellants and document Ex.B.1 of Insurance Policy filed on behalf of respondents has arrived at a conclusion that the rash and negligent act on the part of the driver of the lorry is proved and held that Respondents 1 and 2 are liable to pay compensation of Rs.7,35,700/- out of the claim of Rs.15,00,000/- by the appellants.

The appellants being aggrieved by the award of less amount of compensation awarded than their claim of Rs.15,00,000/- have preferred this appeal.

The learned counsel for the appellants mainly submitted that certificate of the deceased Ex.B.13 has not been considered by tribunal while awarding compensation. A perusal of the judgment of the tribunal would reveal that P.W.4 has deposed about the income of the deceased. P.W.4 has issued Ex.A.13 the income certificate showing the income of the deceased as Rs.8,406/-. According to the testimony of P.W.3, the net income of the deceased as per Ex.A.13 was Rs.6,750/- and the gross income was Rs.9,081/-.

The award of the tribunal at page No.5 at para 2 of the judgment, calculation of compensation is as under:

> *"The income of the deceased according to P.W.4 who was issued Ex.A.13 is Rs.8,406/-. P.W.3 stated that according to Ex.A.13, the net pay is Rs.6,750/- and gross pay is Rs.9,081/-, But in Ex.A.13 it is mentioned as Rs.8,406/- only and net pay according to P.W.4 is Rs.5,926/- from May, 2003 when the accident occurred. So, from the evidence of P.W.4, the deceased was taking home Rs.5,926/- per month."*

Analysis of the income by the tribunal is somewhat appears incorrect and irrational. The income certificate was issued by P.W.4 which is Ex.A.13 and it discloses that the income of the deceased was Rs.8,406/- per month. P.W.3 states that as per Ex.A.13, the net pay was Rs.6,750/- and gross income was Rs.9,081/-. There is inconsistency in the testimony of P.Ws.3 and 4. The testimony of P.W.4 only is to be taken into consideration as he is the person who has issued Ex.A.13 certificate. As per the salary certificate issued by P.W.4, the income of the deceased was Rs.8,406/-. The trial court has taken into consideration the take home salary as Rs.5,926/- per month. As a matter of fact, there is no clear provision that the annual take home salary is to be taken into consideration of the income of the deceased. The total income of the deceased is undisputedly Rs.8,406/- which ought to have been considered by tribunal for the purpose of calculation. Therefore, the tribunal has erred in arriving at a conclusion that the income of the deceased was only Rs.5,926/- per month which is taken as taking home salary in stead of considering the gross salary of Rs.8,406/- per month.

By taking the income of the deceased as Rs.8,406/- if the calculation is made, compensation awarded would be as under:

After deducting 1/3rd income of the deceased from Rs.8,406/-, it comes to Rs.5,604/- (i.e., Rs.8,406/- - 2,802/- = Rs.5,604/-) which is being spent by the deceased towards his notional personal expenditure if he was alive. The annual income of the deceased is Rs.67,248/- (Rs.5,604/- x 12 months = Rs.67,248/-). The multiplier applicable to the age of the deceased is '15' and the compensation payable to the appellants is Rs.10,08,720/- (Rs.67,248/- x 15 = Rs.10,08,720/-). The tribunal has refused to take that expenditure for the reasons that the deceased being a Government employee and he was entitled for reimbursement. The tribunal has also observed that there is no evidence on record whether the deceased bills were reimbursed or not. Even then, the tribunal has not considered the expenditure incurred by the deceased and an amount of Rs.15,000/- was awarded towards medical expenses as per II Schedule of the M.V.Act. In view of the many discussions of the Honourable High Court and Honourable apex court, the actual amount of medical expenditure is being paid to the claimants. There is no evidence on record to show that the said expenditure towards medical expenses was not incurred by the family members of the deceased. Insurance Company has not brought on record denying the amount spent on the deceased towards medical expenditure. Therefore, awarding of actual expenditure incurred for the deceased towards medical expenditure is just and reasonable, therefore, the claim of Rs.54,701/- is awarded towards medical expenses. Compensation payable to the appellants comes to Rs.10,63,421/-. (Rs.10,08,720/-+ Rs.54,701/-).

It is also pertinent to note that towards funeral expenses, the tribunal awarded Rs.2,000/- and towards loss of estate, tribunal awarded Rs.2,500/- which appear to be very meager amount and therefore, they are enhanced to Rs.10,000/- each respectively. (Total Rs.20,000/-). Hence, it comes to Rs.10,83,421/- (Rs.10,63,421/- + Rs.20,000/-)

The tribunal has awarded consortium of Rs.5,000/- towards loss of love and affection due to the death of deceased by the wife of the deceased which is also meager amount and therefore, it is enhanced to Rs.10,000/-. Thus the total amount of compensation payable comes to Rs.10,93,421/- (Rs.10,83,421/-+ Rs.10,000/-).

On a consideration of material available on record, in the light of the 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) compensation awarded by the Tribunal of Rs.7,35,700/- is enhanced to Rs.10,93,421/-.

The respondents have not filed any appeal challenging the quantum of compensation awarded by the tribunal. On the other hand, respondents have not even made any representation in this case nor submitted any argument.

Considering the facts and circumstances of the case, the compensation is enhanced from Rs.7,35,700/- is enhanced to Rs.10,93,421/-.

In the result, the appeal is partly allowed awarding compensation of Rs.10,93,421/- with interest at the rate of 7.5% per annum from the date of petition till realization. The respondent No.2 is directed to deposit the balance amount of compensation within three months from the date of receipt of a copy of this order. Appellant No.2 was declared as major by order 28-1-2006. The appellants 1 and 2 are permitted to withdraw half of the amount, after depositing by the 2nd respondent-Insurance company. The respondent No.2 is directed to deposit the balance amount after expiry of appeal time.

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

JUSTICE G.SHYAM PRASAD

Dated.11-11-2016.
Dvs.

HONOURABLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.140 OF 2006

Dated.11-11-2016.

Dvs