

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1679 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the petitioner-appellant, being minor, represented by his grand-father as next friend, aggrieved by the order and decree dated 03.11.2006, passed in O.P.No.471 of 2002 by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District and Sessions Judge (Fast Track Court), Markapur, Prakasam District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.2,76,500/- was awarded towards compensation, while apportioning a sum of Rs.50,000/-, from out of the said compensation, in favour of respondent No.3, who is the father of the petitioner, with interest @ 9% per annum, as against the claim of Rs.3,88,500/-, laid under Section 163-A of the Act, with interest @ 15% per annum, for the death of his mother in a road accident that occurred on 27.10.2001, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 – owner of the offending Bus bearing No.AP 27-T 8253 is respondent No.1; respondent No.2 – United India Insurance Company Limited is respondent No.2; and respondent No.3 – father of the petitioner is respondent No.3; in O.P.No.471 of

2002. For the sake of convenience, the parties herein are referred to as they are arrayed in O.P.No.471 of 2002 before the Tribunal.

3. The fact-situation occurring in the instant case is that, on 27.10.2001, the deceased - Vallapuneni Saraswathi, who is the mother of the petitioner, along with some others of the village went to Markapur on a tractor and trailer belonging to their village to bring provisions, household goods, fertilizer bags and other necessary things, as the R.T.C. buses were not plying due to strike, and while returning to their village in the same tractor and trailer after completion of their work, at about 8.30 p.m., when they crossed the Power Station on Markapur – Vijayawada road, a private bus bearing No.AP 27T 8253 came in opposite direction driven in a rash and negligent manner at high speed and hit the tractor and trailer, as a result of which, the deceased and others died on the spot and several others received multiple injuries. Stating that the petitioner lost income of more than Rs.3,000/- per month due to the death of his mother, as the deceased – mother used to earn Rs.3,000/- per month by doing agriculture work and household duties, he sought the aforesaid amount towards compensation from respondent Nos.1 to 3, as respondent No.3, who is his father, remarried within no time after the death of the mother of the petitioner.

4. The 1st respondent – owner of the offending bus remained exparte before the Tribunal.

5. 2nd respondent – insurer filed counter opposing the claim petition by raising various grounds and also pleading that the deceased was travelling as a gratuitous passenger on the tractor and trailer and, thus, there has been violation of the provisions of the Act and, therefore, the petitioner is not entitled to maintain the claim petition against the insurer.

6. It appears, originally, the claim petition was laid for a compensation of Rs.2,00,000/-, however, later amended by way of filing an amendment application, claiming compensation of Rs.3,88,500/-.

7. The Tribunal, basing on the pleadings and evidence available on record, framed three issues.

8. During enquiry, on behalf of the petitioner, the grandfather of the petitioner examined himself as P.W.1 and marked Exs.A-1 to A-6. On behalf of the 2nd respondent, none was examined and no documents were marked.

9. The Tribunal, having recorded a finding in favour of the petitioner on issue No.1; on issue No.2, by fixing the income of the deceased at Rs.2,000/- per month on agriculture and by taking the age of the deceased as 20 years, as on the date of accident, after deducting 1/3rd towards her personal

expenses, arrived at a sum of Rs.16,000/- per annum towards contribution to the family and applying the multiplier factor '17', arrived at a sum of Rs.2,72,000/- towards loss of dependency, besides granting a sum of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, as per II Schedule to Section 163-A of the Act. Thus, the Tribunal arrived at a total compensation of Rs.2,76,500/-, out of which a sum of Rs.50,000/- was apportioned in favour of respondent No.3, as he remarried after the death of the deceased and could not show that he is entirely dependent on the earnings of the deceased.

10. Aggrieved by the aforesaid order and decree, the petitioner has preferred the present appeal.

11. Heard Sri Nuthalapati Krishna Murthy, learned counsel for the appellant/petitioner, and Mrs. P. Nireekshana, learned Standing Counsel for 2nd respondent – United India Insurance Company Limited. Though, respondent Nos.1 and 3 are served, none appears for them.

12. The points that arise for consideration in this appeal are – (1) whether the compensation awarded by the Tribunal is just and adequate? and (2) whether apportionment of compensation, to the extent of Rs.50,000/- granted by the Tribunal in favour of the 3rd respondent – father of the petitioner, can be maintained?

13. So far as the earnings of the deceased at Rs.2,000/- per month fixed by the Tribunal is concerned, no doubt, learned counsel for the petitioner would submit that as per the law declared by the Hon'ble Apex Court, even an agricultural labour is earning a minimum of Rs.3,000/- per month and, therefore, seeks to fix monthly earnings of the deceased at Rs.3,000/- per month, instead of Rs.2,000/- as was taken by the Tribunal.

14. *Per contra*, learned Standing Counsel for the 2nd respondent – insurer would submit that from the very assertion made by the grand-father of the petitioner, it is clear that the deceased was earning Rs.2,000/- per month.

15. A perusal of the chief-examination of P.W.1, who is the grand-father of the petitioner, would show that what has been submitted by the learned Standing Counsel for the 2nd respondent – insurer is true, as there has been an assertion by P.W.1 that the deceased was earning Rs.2,000/- per month. Thus, it is difficult to accept the submission made by the learned counsel for petitioner to fix the monthly earning of the deceased at Rs.3,000/-. Therefore, the finding recorded by the Tribunal taking the earning of the deceased at Rs.2,000/- per month is confirmed. Even the deduction of 1/3rd earnings made by the Tribunal towards personal living expenses of the deceased is also maintained, so also adopting the multiplier

factor '17' in order to arrive the loss of dependency at Rs.2,72,000/-, besides granting the amounts of Rs.2,000/- and Rs.2,500/- towards funeral expenses and loss of estate, respectively, by the Tribunal, for the reason that the said amounts have been granted under the relevant Heads under II-Schedule to Section 163-A of the Act. Thus, the total compensation of Rs.2,76,500/- arrived at by the Tribunal is just and adequate.

16. However, the apportionment of a sum of Rs.50,000/-, from out of the said compensation amount, to the 3rd respondent – father of the petitioner, cannot be maintained, in view of the positive assertion made by P.W.1 that the 3rd respondent had remarried within no time after the death of the deceased. Thus, the finding recorded by the Tribunal, to the extent of apportionment of Rs.50,000/- to the 3rd respondent – father of the petitioner, is set aside, and the petitioner is entitled to the entire compensation of Rs.2,76,500/- arrived at by the Tribunal, with interest @ 9% per annum, which the Tribunal has awarded.

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part, by setting aside the finding recorded by the Tribunal, to the extent of apportionment of Rs.50,000/- to the 3rd respondent – father of the petitioner, by holding that the appellant/petitioner is entitled to the entire compensation of Rs.2,76,500/- arrived at by the Tribunal, with interest

@ 9% per annum, from the date of petition till realisation. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

17.08.2016.
Msr



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