

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2685 OF 2009

JUDGMENT:

The appellants, who are petitioners (claimants) in O.P. No.60 of 2006, dissatisfied with the grant of Rs.1,87,500/- towards compensation by the learned Chairman, Motor Accidents Claims Tribunal - cum - VII Additional District Judge, Mahabubnagar (for short "Tribunal"), through the order and decree, dated 08.09.2008, for the death of one Mohd. Tajuddin, who is husband of petitioner No.1, father of petitioner Nos.2 to 8 and son of petitioner Nos.9 and 10, as against their claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, preferred the instant Civil Miscellaneous Appeal, seeking enhancement of compensation.

2. The appellants herein are petitioners (claimants) in the appeal before the Tribunal, while respondent Nos.1 and 3, who are owner and insurer, respectively, of the Ambassador Car bearing No.AP-22-U-7801 that involved in the accident, are respondent Nos.1 and 3, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the

Tribunal.

4. The fact-situation occurring in the instant case is that on 29.04.2004, while one Mohd. Tajuddin was travelling in a van bearing registration No.AP-22-E-335 along with his family from Narayanpet to Hyderabad, at about 4.30 p.m., an Ambassador Car bearing No.AP-22-U-7801, driven in a rash and negligent manner, came in the opposite direction, and hit the van, due to which, Tajuddin sustained serious injuries and while he was being shifted to Osmania General Hospital, succumbed to the injuries. The Station House Officer, Balanagar Police Station, registered a case against the Ambassador Car driver in Crime No.32 of 2004 for the offence punishable under Section 304-A of the Indian Penal Code and investigated into. The petitioners, therefore, sought a total amount of Rs.5,00,000/- towards compensation.

5. Respondent Nos.1, who is owner of the Ambassador Car that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2 also remained *ex parte*.

7. Respondent No.3, insurer of the Ambassador Car, alone opposed the claim.

8. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

9. During enquiry before the Tribunal, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.A-1 to A-10 were marked, whereas, on behalf of the insurer, a copy of the insurance policy of the Ambassador Car that involved in the accident was marked as Ex.B-1 and no witnesses were examined.

10. On issue No.1, the Tribunal recorded a finding that due to rash and negligent driving of the driver of the Ambassador Car, the accident had occurred and the same ultimately resulted in death of the deceased.

11. So far as compensation is concerned, the Tribunal, taking the age of the deceased as 42 years at the relevant time, applied multiplier '15' basing on the entries in Schedule - II to Section 163-A of the Act and taking the income of the deceased as Rs.18,000/- per annum, observing that no material was placed to show definite income of the deceased, deducting $1/3^{\text{rd}}$ i.e., Rs.6,000/- ($\text{Rs.18,000/-} \times 1/3$) therefrom towards his personal expenses, arrived at Rs.1,68,000/-, but in fact, ought to have arrived at Rs.1,80,000/- ($\text{Rs.12,000/-} \times 15$ multiplier) towards loss of dependency. Besides the same, the Tribunal granted Rs.15,000/- towards loss of

consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate and thus, granted a total sum of Rs.1,87,500/- towards compensation with interest at 7.5% per annum from the date of petition till realization apportioning the compensation among the petitioners.

12. The claimants, feeling that the aforesaid amount as meager sum towards compensation, preferred the instant appeal contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence of PWs.1 and 3 in fixing the income of the deceased, and, therefore, sought to grant the balance amount.

13. Heard Sri Nambi Krishna, learned counsel for the appellants (petitioners).

14. No representation for the insurance company (respondent No.3).

15. Notice on respondent No.1, owner of the ambassador car, was not completed since it was unreturned, however, since he remained *ex parte* before the Tribunal and the Tribunal, in fact, passed decree against respondent Nos.1 and 3, his absence is of no consequence.

16. During the course of arguments, learned counsel for the petitioners would submit that the claimants

have traced out the assessment orders passed by the income tax department under

Section 143(1) of the income Tax Act, 1961 showing annual income of the deceased as Rs.74,500/- for the assessment year 2003-04 and the date of return as 03.10.2003 and date of filing return as 26.12.2003 and other related documents. In fact, learned counsel placed the same for perusal of this Court, however, no petition as required under Order - XLI Rule 27 of the Code of Civil Procedure, 1908, to receive these documents was filed. Even otherwise, when the income tax assessment order is forthcoming issued by the competent department, due to the inability of the petitioners to file them at the appropriate time, certainly, they cannot be made to suffer in getting fair compensation. In that view of the matter, it is desirable to remit the matter to the Tribunal.

17. Therefore, the order and decree under challenge are set aside and the matter is remitted to the Tribunal for disposal afresh. Since the accident took place in 2004, it would be reasonable to direct the Tribunal to afford a chance to both parties to lead further evidence, if any, both, oral and documentary in addition to the evidence already let in by the parties and to adjudicate upon the claim and dispose of the O.P. within six (6) months from the date of receipt of a copy of this order. If any amount is already deposited by the insurer and

withdrawn by the petitioners, it would be proper for the Tribunal to pass orders as required.

18. With the directions as above, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

July 21, 2016.

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