HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3131 of 2005

JUDGMENT :

Aggrieved by the order and decree dated 05.09.2005 in M.V.O.P.No.1029 of 2001 passed by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-XI Additional District Judge (FTC), Tenali, Guntur District, (for brevity "the Tribunal"), awarding a sum of Rs.1,36,500/- as compensation, as against the claim of Rs.1,76,000/- made under Section 163-A of the Motor Vehicles Act, 1988, by the appellants/petitioners, who are the parents, sister and brother of the deceased, who died in a motor accident that occurred on 26.06.2001 at about 3-30 a.m., near Guntur-Ponnur Road, the present civil miscellaneous appeal has been preferred.

2. The appellants are petitioners, respondent No.1 is the owner of the Tipper bearing registration No.AP 5U 6759 and respondent No.2 is its insurer; Respondent No.3 is the owner of the mini Lorry bearing registration No.AP 7V 864 and respondent No.4 is its insurer; in M.V.O.P.No.1029 of 2001. For the sake of convenience, the parties are referred to as they were arrayed in the O.P., before the Tribunal.

3. The facts, in brief, are that in the early hours of 26.06.2001 at about 3-30 a.m., while a Mini Lorry bearing registration No.AP 7V 864, on which the deceased was working as cleaner, was proceeding from Guntur to Tenali and when it crossed Budampadu Village on Guntur-Ponnur Road, a Tipper bearing registration No.AP 5U 6759 came in opposite direction driven in a rash and negligent manner and hit the Mini Lorry, due

to which the deceased initially sustained fatal injuries and he was shifted to the Government Hospital at Tenali, where he succumbed to the injuries and the police concerned also registered a case in Crime No.176/2001 against the driver of the Tipper bearing registration No.AP 5U 6759. The petitioners, being parents, sister and brother, respectively, of the deceased, stating that they were dependants on the deceased, who died in unmarried status and the deceased was earning a sum of Rs.1,500/- per month, claimed a sum of Rs.1,50,000/- towards loss of dependency and a total sum of Rs.1,76,000/- was claimed towards compensation from respondent Nos.1 to 4, who are the owners and insurers of the Tipper bearing registration No.AP 5U 6759 and Mini Lorry bearing registration No.AP 7V 864, respectively.

4. Before the Tribunal, respondent Nos.1 and 3, who are the owners of Tipper and Mini Lorry, respectively, have not contested the claim and remained *exparte* and only the insurers of the said vehicles, who are respondent Nos.2 and 4, respectively, have opposed the claim raising various pleas, including the liability sought to be fastened on the respective Insurance Companies, while attributing negligence to the drivers of the opposite vehicles. The Tribunal, basing on the said pleadings, framed the following issues for trial:

(1) Whether the accident took place due to the rash and negligent driving of the driver of the lorry No.AP 5U 6759?

(2) Whether the petitioners are entitled for the compensation? If so, to what account and from which of the respondent?

(3) To what relief?

5. During the course of enquiry, the petitioners examined one Amruthaluri Padma Rao and Vadali Koteswara Rao, an eye

witness to the occurrence as P.Ws.1 and 2, respectively, and marked Exs.A.1 to A.6. On behalf of the respondents, true copy of the policy was marked as Ex.B.1. The Tribunal, on issue No.1, while appreciating the evidence on record, having found that there was negligence on the part of both the vehicle drivers, answered that the accident had taken place due to the negligence of the drivers of both the vehicles. On issue No.2 relating to the income of the deceased, though it was claimed by the petitioners that the deceased was working as cleaner and earning Rs.1,500/- per month towards salary and Rs.800 to Rs.1000/- towards batta, the Tribunal has taken the notional income of the deceased at Rs.15,000/- and after deducting 1/3rd of the said income towards personal expenses of the deceased, arrived the loss of dependency at Rs.10,000/- per annum. Since the deceased was aged 24 years on the date of accident as per the postmortem report and inquest report, and that the mother and father of the deceased are 40 years and 45 years, respectively, as on the date of accident, the Tribunal had taken the multiplier '13' basing on the Second Schedule to Section 163-A of the Motor Vehicles Act, 1988 (as amended in 1994) and arrived at Rs.1,30,000/- (Rs.10,000 x 13) towards loss of dependency. The Tribunal also granted Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate, and another sum of Rs.2,000/- towards transportation of the body of the deceased from the site of accident to the hospital. Thus, a total sum of Rs.1,36,500/- was awarded towards compensation with interest @ 7.5% per annum from the date of filing of the petition till realization, while directing respondent Nos.1 and 2, as one set, to pay 50% of the compensation; and respondent Nos.3 and 4, as the other, to pay the remaining 50% of the compensation amount.

6. Seeking enhancement of compensation, the instant appeal is preferred by the appellants/petitioners, contending in the grounds of appeal, that the Tribunal ought to have taken the monthly income of the deceased at Rs.2,500/-, instead of taking the notional income, and ought to have granted the rate of interest at 12% per annum.

7. No representation for the petitioners. Heard Sri Kota Subba Rao, learned Standing Counsel for the 4th respondent-Oriental Insurance Company, and Sri R. Venkat Rao, learned Standing Counsel for respondent No.2-National Insurance Company Limited, and perused the material on record.

8. Admittedly, the deceased died in un-married status. There is no dispute as regards the occupation of the deceased as a Cleaner in Mini Lorry. The Tribunal has taken the notional income of the deceased for assessing the compensation, instead of going by the record that the deceased was working as a Cleaner of the Mini Lorry and earning Rs.1,500/- per month. Further, the Tribunal had deducted 1/3rd towards personal expenses of the deceased, instead of deducting 50% towards it. It is stated in the grounds that since the deceased died in unmarried status, the Tribunal ought to have taken the relevant multiplier '16', instead of applying the multiplier '13', keeping in view, the age of the deceased and not the age of the younger parent of the deceased. So, considering that the deceased was working as Cleaner and atleast must be earning Rs.1,500/- per month as on the date of accident and the fact that other amounts awarded are also on lower side; certainly, the petitioners are entitled for Rs.1,76,000/- towards compensation for the death of the deceased, as claimed by them.

9. Hence, the Civil Miscellaneous Appeal is allowed in all

respects, by enhancing the amount of compensation from Rs.1,36,500/- to Rs.1,76,000/- with interest at the same rate of 7.5% per annum, as awarded by the Tribunal, and the apportionment of the liability ordered by the Tribunal shall remain undisturbed, as no appeals are preferred by respondent Nos.2 and 4 – Insurance Companies. There shall be no order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

03.02.2016.
Msr

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CIVIL MISCELLANEOUS APPEAL No.3131 of 2005

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Msr