

**HON'BLE SMT JUSTICE ANIS**

**M.A.C.M.A. No. 7 OF 2008**

**JUDGMENT:**

This appeal is filed by the appellant/respondent No.2 under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), aggrieved by the order, dated 27.09.2007, in O.P.No.653 of 2005, passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District (for short, 'the Tribunal').

2. The claimants filed the above O.P. under Section 166 of the Act claiming compensation of Rs.5,00,000/- on account of death of Praveen Kumar (hereinafter referred to as 'the deceased') in a road accident.

3. Before the Tribunal, the appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent Nos.1 to 3 herein, who are the wife and children of the deceased, are the petitioners and respondent No.4 herein, who is the owner of the crime vehicle, is respondent No.1 and respondent No.5 herein, who is mother of the deceased, is respondent No.3, in the original petition.

4. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

5. The brief averments made in the petition are as follows:

The petitioners stated that on 09.08.2005, the deceased was proceeding on a scooter bearing registration No.AP 28D 7936 from

Hyderabad to Hayathnagar side and when he reached near Deer Park on National Highway No.9 at about 5-30 p.m., the driver of one tipper bearing registration No.AP 24T 7903 drove the tipper in a rash and negligent manner and hit the scooter from its behind, as a result of which, the said deceased fell down and, on the way to the hospital, he died due to the injuries.

The petitioners further stated that the deceased was aged 32 years at the time of the accident, working as an electrician and earning Rs.6,000/- per month.

According to the petitioners, respondent No.3 is the mother of the deceased and she died during the pendency of the proceedings and the case against her is abated before the Tribunal.

6. Respondent No.1 remained *ex parte* before the Tribunal.
7. The brief averments made in the counter filed by respondent No.2 before the Tribunal are as follows:

Respondent No.2 put the petitioners to prove the manner of accident, age and income of the deceased. Further, the driver of the offending vehicle was not having a valid driving licence and finally, prayed the Court to dismiss the petition.

8. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim of the petitioners, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.8. On behalf of

respondent No.2, no oral evidence was adduced, but Ex.B.1-copy of insurance policy was marked by consent.

9. After considering the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of driver of the tipper bearing registration No.AP 24T 7903 and awarded compensation of Rs.3,66,280/- with interest @ 7.5% per annum. Aggrieved by the same, respondent No.2/Insurance Company filed the present appeal.

10. Learned counsel for respondent No.2-Insurance Company (appellant herein) argued that the Tribunal, granted compensation, though there is no valid proof of occupation and income of the deceased. Further, the claimants are not entitled to any compensation towards loss of consortium, loss of love and affection, future prospects and loss of estate. Finally, he stated that the Tribunal has not appreciated the evidence on record properly and awarded compensation and therefore, prayed the Court to allow the appeal by setting aside the award passed by the Tribunal.

11. On the other hand, learned counsel for the petitioners (respondent Nos.1 to 3 herein) argued that the Tribunal after considering the evidence on record, granted just and reasonable compensation and the said finding of the Tribunal needs no interference and finally, prayed to dismiss the appeal.

12. Having regard to the submissions made by both the learned counsel, the only point that arises for consideration is:

Whether the appellant-insurance company has made out any case to set aside the order, dated 27.09.2007, passed by the Tribunal in O.P.No.653 of 2005?

13. **POINT:**

A perusal of the oral and documentary evidence produced by the claimants shows that there is no dispute that on 09.08.2005, while the deceased was proceeding on his scooter, the driver of the tipper bearing registration No.AP 24T 7903 drove it in a rash and negligent manner and dashed the scooter. Due to which, the deceased fell down, sustained injuries and died while taking to the hospital. The Tribunal, after considering the evidence on record, held that the accident occurred only due to the rash and negligent manner of the driver of the tipper bearing registration No.AP 24T 7903.

14. The Tribunal, after considering the evidence of P.Ws.1 to 3, taken the annual income of the deceased as Rs.23,760/-, deducted 1/3<sup>rd</sup> therefrom towards personal living expenses of the deceased and taken the remainder of Rs.15,840/- as the contribution of the deceased to the family and by applying multiplier '17', arrived the loss of future income of the deceased at Rs.2,69,280/- (Rs.15,840/- x 17). The Tribunal also awarded Rs.20,000/- towards loss of

consortium, Rs.25,000/- towards loss of love and affection, Rs.25,000/- towards future prospects, Rs.25,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. Thus, a total amount of Rs.3,66,280/- was awarded by the Tribunal to the petitioners.

15. Respondent No.2-Insurance Company, though preferred the instant appeal, has not adduced any oral or documentary evidence before the Tribunal to deny the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.8. Therefore, considering the evidence of P.Ws.1 to 3 and the documentary evidence Exs.A.1 to A.8, the Tribunal has rightly awarded just and reasonable compensation to the petitioners and the said finding of the Tribunal needs no interference.

16. Accordingly, the appeal is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any pending in this appeal, shall stand closed.

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**ANIS, J**

Date: 02.01.2017

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