

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2466 OF 2005

JUDGMENT:

The order dated 19.4.2005 passed by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II-Addl. District Judge, Guntur in MVOP No. 13 of 2000 is assailed by the claimants in the above mentioned OP raising a main contention that no adequate compensation is awarded to them in respect of death of the deceased Shaik Abdul Shukur who died on account of the injuries sustained by him in the accident dated 1.12.1999.

The facts and circumstances which made the claimants to approach this Court, as narrated by them in their pleadings, are briefly stated as under,

The appellants are the wife, children and mother of the deceased Shaik Abdul Shukur. Their contention is that on 1.12.1999 at about 9.30 A.M. while the deceased Abdul Shaik Shukur was coming from Guntur to Ponnur on his scooter along with his son Sri Abdul Zakir (4th appellant herein), when they reached near the left side of the road near Kommur canal bridge, a jeep bearing No. AP 7 T 2781, driven by its driver with high speed in a rash and negligent manner, came on wrong side and dashed against the scooter of the deceased and due to which the deceased sustained fatal injuries and died on the spot. In the said accident his son Abdul Zakir (4th appellant herein) sustained injuries and was shifted to Government Medical Hospital, Guntur and there his statement was

recorded by the police of Chebrole and based on his statement, a case in Cr.No. 144 of 1999 was registered under Sections 304-A and 338 IPC.

Based on the above mentioned pleadings of the claimants, the Tribunal framed the following issues,

- (1) Whether the accident occurred due to rash and negligent driving of the driver of jeep bearing No. AP 7T 2781?
- (2) To what compensation the petitioners are entitled and from whom?
- (3) To what relief?

The Tribunal, relying on the ocular testimony of P.W.2 who was with the deceased at the relevant point of time and Exs.A1 to A4, the certified copies of FIR, charge sheet, Motor Vehicle Inspector's report and post mortem report, had come to the conclusion that the accident dated 1.12.1999 which resulted in the death of the deceased had occurred on account of the rash and negligent driving of the jeep bearing No. AP 7T 2781 by its driver and accordingly answered the issue No.1 in favour of the claimants. There was no quarrel regarding the manner of the accident and the negligence attributed to the driver of the crime vehicle.

The only controversy was regarding the quantum of compensation awarded by the Tribunal. The contention of the appellants was that the Tribunal ought to have applied a multiplier of '14' instead of '10'. The Tribunal by applying a wrong multiplier had awarded less compensation to the claimants, petitioners in OP No. 13 of 2000, though it was held by the Supreme Court in *General Manager, Kerala State Road Transport*

Corporation Vs. Susamma Thomas ¹ that the relevant multiplier for the age group of 40-45 years was '14'. Their further contention was that the Tribunal awarded the consortium of Rs.10,000/- instead of awarding Rs.15,000/-. It was also contended by the appellants that no amount was awarded under the head of *funeral expenditure* and that the amount awarded under the *loss of estate* was also very meager. Apart from the above mentioned contentions, yet another contention was raised by the appellants that though the evidence was let in by them to establish the earnings of the deceased as a *goldsmith* and as a partner of the business relating to cable TV connection etc, the Tribunal, discarding the voluminous evidence adduced by them, had taken the income of the deceased at Rs.2,000/- per month, though in several reported decisions the Apex Court had taken the view that the income of a non-earning member can be taken at Rs.3,000/- per month etc.

The claimants had examined the Branch Manager of Indian Bank, Ponnur as P.W.4 and Branch Manager, Canara Bank, Chinalingayapalem as P.W.5, to establish that the deceased was working as a *gold appraiser* in their banks. The claimants also examined P.W.3 who was doing gold business under the name and style of Rajyalakshmi Jewellery Mart, Ponnur and doing a city cable business to establish that the deceased was doing gold business and he was also one of the partners in city cable business and he was working as Secretary of an association formed by the cable operators. Since it is not possible to assess the income of the deceased taking into consideration the evidence of PWs 3 to 5, the

¹ 1994 ALT SC 1

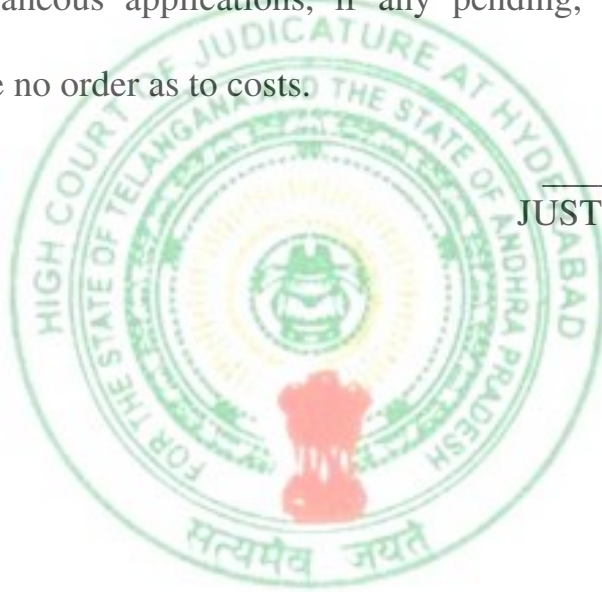
Tribunal seems to have taken the view that the income of the deceased can be fixed at Rs.2,000/- per month. There is no controversy so far as the contention of the appellants that the deceased was carrying on business in gold items at Ponnur and was working as a gold appraiser of Indian Bank, Ponnur and Canara Bank, Chinalingayapalem. There cannot be any controversy on the aspect that in case of death of non-earning member, the Apex Court has taken the income of the deceased at Rs.3,000/- per month to arrive at a conclusion on the aspect of assessing compensation under the head of loss of earnings. In that case, there cannot be any hesitation for this Court to award compensation under the head of loss of earnings taking into consideration the income of the deceased at Rs.3,000/- per month. If the income of the deceased is taken at Rs.3,000/- per month, on deducting 1/3rd of his income towards his personal expenditure, the loss of dependency comes to Rs.2,000/- per month and per year it comes to Rs.24,000/-. If it is multiplied by a relevant multiplier of '14', the total loss of dependency comes to Rs.3,36,000/-. Since the Tribunal has not awarded any amount under the head of funeral expenditure, this Court awards a sum of Rs.5,000/- under the head of *funeral expenditure*. The Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium, instead of Rs.15,000/-, as contended by the appellants. Accepting the contention of the appellants that awarding of compensation of Rs.15,000/- towards consortium is reasonable, this Court awards Rs.15,000/- under the head of loss of consortium as against Rs.10,000/-. Taking into consideration the nature of the business run by the deceased, this Court also feels that an amount

of Rs.10,000/- awarded under the head of loss of estate is also very meager and the same is accordingly enhanced to Rs.44,000/-. The claimants are accordingly entitled to get compensation of Rs.4,00,000/- (Rupees Four Lakhs only).

The appeal is allowed accordingly enhancing the compensation to Rs.4,00,000/- as against Rs.1,80,000/-. The enhanced compensation amount carries an interest of 7.5% per annum and it shall be payable by the respondents 1 and 2 jointly and severally.

Miscellaneous applications, if any pending, shall stand closed.
There shall be no order as to costs.

Dt. 7.4.2017
KR



JUSTICE J. UMA DEVI