THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 516 of 2013

ORDER:

This appeal is arising out of the order dated 06.11.2012 in O.P.No.220 of 2010 on the file of the Motor Accidents Claim Tribunal-cum-I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad (for short, 'the Tribunal').

2. Brief facts of the case are that on 04.10.2009 when the deceased Sailu was proceeding on Hero Honda bike bearing No.AP-28S-1771 from Toopranpet village on the left side of the road, and when he reached Toopranpet Centre, at 8:30 PM, an RTC bus bearing No.AP-28Z-3941, coming from Vijayawada and proceeding to Hyderabad, driven by its driver in a rash and negligent manner, dashed against the motorcycle of the deceased from its behind. As a result of which, the deceased sustained grievous head injury and died instantaneously. Alleging that the accident occurred due to rash and negligent driving by the driver of RTC bus, the petitioners filed the petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.20,00,000/- against the respondents-RTC.

3. The Tribunal, on consideration of the evidence of PWs.1 to 6, and the documents Exs.A1 to A11 and Exs.X1 to X7, awarded compensation of Rs.9,65,000/- with interest at 7.5% per annum from the date of petition till realisation.

4. Aggrieved by the award passed by the Tribunal, the APSRTC filed this appeal mainly contending that the compensation awarded is highly excessive and the same requires to be reduced.

5. The point for consideration in this appeal is:

(i) Whether the compensation awarded by the Tribunal is highly excessive?

6. Heard the arguments of the learned Standing counsel for the appellants-RTC. No representation on behalf of the respondents-claimants.

7. Learned counsel for the appellants-RTC submitted that the dispute is only with regard to the income of the deceased taken by the Tribunal in awarding compensation. There is evidence on record to show that the deceased was a Coolie by profession. In Ex.A1-FIR, it is mentioned that the deceased was a Coolie by profession, and when he is a Coolie, his income cannot be taken as Rs.8,000/- per month, and since the income of the deceased is taken on higher side while computing the compensation, the same requires to be reduced.

8. It is contended that the Tribunal has deducted 1/4th of the income of the deceased towards his personal expenditure, whereas the deduction should have been 1/3rd of his income. It is further contended that the 4th respondent is the mother of the deceased and she is dependent on PW4 who is the elder brother of the deceased. Since the mother is dependent on the elder brother PW4, she cannot be taken into consideration as dependent on the deceased and, therefore, 1/3rd of the income should be deducted towards personal expenditure of the deceased, instead of 1/4th.

9. The main contention of the appellant is that the Tribunal has taken the income of the deceased as Rs.8,000/- per month without there being any proof that his income is Rs.8,000/- per month.

10. The evidence of PW6-Sridhar Rao, who is Supervisor in Jersey Dairy, would prove that that the deceased was earning Rs.10,000 to Rs.12,000/- per month prior to his death. His evidence further reveals that the deceased was agent in collection of milk in Dandu Mailaram village since February 2009 and his agency code was No.06004 and 06009 and after the death of the deceased the said agency was allotted to some other person. He has also filed Exs.X6 and X7 i.e., income statement and commission statement of the deceased which shows that the deceased was working as Agent for Jersey Milk Products Company and was earning not less than Rs.10,000/- per month.

11. On consideration of the evidence, the Tribunal has rightly taken into consideration his income as Rs.8,000/- per month, and awarded compensation and, therefore I do not see any illegality in the finding of the Tribunal in taking the income of the deceased as Rs.8,000/- per month.

12. The other contention of the appellants-RTC is that the mother of the deceased is not dependent on the deceased, and that she is dependent on PW4 who is the elder brother of the deceased, and therefore 1/3rd should be deducted from the income of the deceased towards personal expenditure.

13. The contention of the learned counsel for the appellants that the Tribunal has deducted 1/4th instead of 1/3rd, considering the mother as dependent on PW4 who is the elder brother of the deceased, cannot be accepted because, as a matter of fact, the mother may also be dependent on the deceased. Further, there is no specific evidence on record to show that the mother of the deceased was not dependent on the deceased, and

that she is dependent on PW4 who is the elder brother of the deceased. Therefore, I do not see any ground to interfere with the finding of the Tribunal in deducting 1/4th amount towards personal expenditure of the deceased.

14. On consideration of the evidence, and in view of the facts and circumstances of the case, since the Motor Vehicles Act, 1988, is a beneficial legislation and as the dispute is only with regard to the quantum and the Tribunal has rightly considered all the aspects and awarded just compensation, I do not see any valid ground to interfere with the findings of the Tribunal.

15. In view of the above, there is no merit in the appeal and the appeal is liable to be dismissed.

16. In the result, the appeal is dismissed, and the order dated 06.11.2012 in O.P.No.220 of 2010 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

22nd March, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

<u>M.A.C.M.A. No. 516 of 2013</u>

22nd March, 2017

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