HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.1411 of 2010

JUDGMENT:

The appeal is preferred by the claimants, who are the father, mother and sister of the deceased boy Meka Satish, aged 14 years, who died in a road accident, said to have taken place on 21.07.2008, involving the lorry bearing registration No.AP-37-V-7519, being driven by the 1st respondent in a rash and negligent manner. The 2nd respondent is the owner and the 3rd respondent is the insurer of the offending lorry. The appellants claimed a total compensation of Rs.3,00,000/- in M.V.O.P.No.733/2008, against which, the learned Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (FTC), Narsapur (for short "the Tribunal), by award dated 07.08.2009, awarded a compensation of Rs.1,62,000/-. Aggrieved by that, the present appeal is preferred by the claimants.

The facts in brief are that on 21.07.2008 when the deceased boy and his sister were proceeding on their cycles to the school and when they reached TTD Kalyanamandapam, Poduru, the offending lorry, being driven by the 1st respondent in a rash and negligent manner dashed against the cycle of the deceased and ran over him, as a result, the deceased sustained severe injuries and died on the spot. By the time of accident, the deceased boy was 14 years, studying 8th class, and he is the only son to his parents and was assisting to his family by selling milk in the morning and evening times and earning Rs.2,700/- per month.

On behalf of the claimants, PWs 1 & 2 were examined and got marked Exs.A1 to A8. On behalf of the respondents, no oral evidence was adduced, but the copy of the insurance policy was marked as Ex.B1.

The learned counsel for the appellants submits that the deceased boy was aged 14 years and studying 8th class and therefore, the Tribunal ought to have taken into consideration the future prospects and awarded compensation, but not restricted the compensation to Rs.1,62,000/-.

On behalf of the insurance company it is submitted that there are no merits to enhance the compensation and hence the appeal is liable to be dismissed.

Heard both sides and perused the material on record.

The factum of death of deceased having taken place on the date, place and time as mentioned and the manner of accident as alleged is not disputed. The fact that is established from the record is that on the date of the accident when the deceased was going on the cycle to school, the offending lorry dashed against his cycle, due to which, the deceased sustained grievous injuries and died on the spot. The rashness on the part of the driver of the offending lorry is not in dispute and therefore, the findings of the Tribunal that the accident took place due to rash and negligent act of the driver of the offending lorry cannot be disturbed, so also, fastening the liability on the respondents Nos.1 to 3 to pay the compensation.

With regard to quantum of compensation, as stated above, the Tribunal determined the total loss of dependency at Rs.1,62,000/-. In arriving at the figure, the Tribunal has taken into consideration the fact that the deceased was a boy of 14 years age and the parents claim that he was earning Rs.2,700/- per month by way of selling milk, however, as there is no satisfactory evidence to prove the income, the Tribunal has took into account the notional income of the deceased at Rs.15,000/- per annum and after deducting 1/3rd therefrom towards personal expenses of the deceased, calculated the same by applying the multiplier ‘15’ and worked out the loss of dependency at Rs.1,50,000/-, which cannot be said to be erroneous.

However, with regard to other compensation awarded under other heads, such as, loss of estate, funeral expenses etc., the Tribunal awarded a sum of Rs.12,000/-, which is in my opinion is inadequate and the same needs to be enhanced.

The deceased was a boy, aged 14 years and therefore, a total sum of Rs.50,000/- towards non-pecuniary damages, such as, loss of estate, love and affection and funeral expenses can be awarded. Subject to this modification, the appeal is liable to be allowed in part.

In the result, the MACMA is allowed in part, enhancing the compensation from Rs.1,62,000/- to Rs.2,00,000/- to the claimants together with interest at 7.5% per annum from the date of petition till the date of realization, to which, the respondents are jointly and severally liable to pay the same with proportionate costs, which shall be deposited within a period of two months from today. The claimants are entitled to withdraw the amount, as and when deposited, in proportion as determined by the Tribunal, without furnishing any security. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 28.06.2017
Dsr