

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

M.A.C.A. NO. 1402 OF 2010

JUDGMENT:

This Appeal is filed by the Insurance Company-Respondent No.2, questioning the award of compensation of Rs.6,31,000/- for the death of one Narayanapuram Ravinder, in an accident said to have taken place on 09.03.2007 at Brahmanpalli village when the deceased was proceeding on motor cycle bearing No.AP-25/C-3284 and when he reached on Nizamsagar Cross Roads, a lorry bearing No.AP-7/W-2056 came in a high speed driven in a rash and negligent manner and dashed against the deceased due to which the deceased sustained grievous injuries on head, leg and other parts of the body and while he was undergoing treatment in Gandhi Hospital, Secunderabad, he succumbed to the injuries on 12.03.2007. Hence, the claim petition.

2. Brief facts of the case are as follows:

On 09.03.2007, when the deceased and one Kodaganti Raju were going on the motor cycle bearing No.AP-25/C-3284 and when they reached on Nizamsagar Cross Roads, a lorry bearing No.AP-7/W-2056, came at a high speed and dashed against the motor cycle, as a result of which the deceased sustained grievous injuries and immediately he was shifted to Government Hospital, Kamareddy, wherefrom he was shifted Gandhi Hospital, Secunderabad and while undergoing treatment thereat, he succumbed to the injuries on 12.03.2007. It is the case of the petitioners, who are parents of the deceased, that the deceased was working as a barber and he was only

earning member of the family and due to his death, they have not only lost their son but financial support. Hence, they claimed compensation of Rs.10.00 lakhs

3. Respondent No.3 herein who is owner of the crime lorry remained exparte and the appellant, which is respondent No.2 before the Tribunal filed counter, denying rash and negligent driving of the crime lorry by its driver. The petitioners' dependency on the deceased, his avocation and his income are denied and prayed to dismiss the appeal.

4. On the basis of the pleadings, the Tribunal framed the following issues:

1. Whether the accident has taken place due to rash and negligence driving of the lorry bearing No.AP-7/W-2057 by its driver?
2. Whether the petitioners are entitled for compensation, if so, to what amount and against whom?
3. To what relief?

5. On behalf of the claimants, PWs 1 and 2 were examined and Exs. A-1 to A-8 were marked. On behalf of the respondents, no oral evidence was let in but copy of the Insurance Policy is marked as Ex.B-1.

6. On an overall appreciation of the evidence, both oral and documentary, the Tribunal while holding that the driver of the crime vehicle was rash and negligent in driving the lorry, has allowed the claim petition in part, granting compensation of Rs.6,31,000/- with costs and interest at 7.5% p.a. from the date of petition till realization.

7. The Insurance Company has not challenged finding of the Tribunal that the accident took place in the manner in which it is alleged on the date, place and time and as spoken to by the claimants and also as averred in the petition. Similarly, the finding of the Tribunal with regard to the accident being due to the rash and negligent driving of the driver of the crime lorry, which admittedly belongs to the third respondent herein and insured with the appellant, is also not in dispute. The only challenge is with regard to the quantum of compensation.

8. On behalf of the claimants, who are parents of the deceased, no appeal is preferred. Therefore, what is required to be seen is whether the compensation determined by the Tribunal is just and reasonable or it needs interference.

9. The deceased was aged about 20 years. According to the claimants, he was carrying on the avocation of barber and was also having agriculture and was earning Rs.10,000/- per month. However, no satisfactory evidence was produced on behalf of the claimants to substantiate the same. Therefore, the Tribunal has taken notional income of the deceased at Rs.150/- per day and Rs.4,500/- per month. The approach of the Tribunal cannot be said to be in any way erroneous warranting interference.

10. The Tribunal taking into consideration the monthly income of the deceased at Rs.4,500/-, has applied the multiplier of '16' instead of '17' which is applicable in case of death of an unmarried person aged 21 years. The Tribunal has further deducted 1/3rd towards

personal expenses of the deceased, having regard to the fact that deceased was admittedly unmarried and ultimately awarded Rs.5,76,000/- towards compensation for the loss of love and affection, loss of estate, pain and suffering and for mental agony.

11. Therefore, the compensation needs to be computed as follows:

As stated above, the proper multiplier that is applicable is '17'. If the monthly income of the deceased at Rs.4,500/- is multiplied with the multiplier '17', pecuniary loss of the claimants comes to Rs.9,18,000/- (Rs.4,500/- x 12 x 17). The deceased being unmarried, half of the income has to be deducted for his personal expenses and thus, the loss of dependency of the claimants comes to Rs.4,59,000/-. As against the above entitlement of Rs.4,59,000/-, the Tribunal has awarded a sum of Rs.5,76,000/- towards compensation for the loss of love and affection, loss of estate, pain and suffering and for mental agony. Thus, this amount of loss of earnings needs to be reduced to Rs.4,59,000/-. Awarding a sum of Rs.20,000/- for pain and suffering, Rs.25,000/- towards transportation charge and Rs.10,000/- towards funeral expenses by the Tribunal is just and reasonable and, as such, needs no interference in this appeal. Thus, the total compensation payable to the claimants works out to Rs.5,14,000/- (Rs.4,59,000/- + Rs.55,000/-) instead of Rs.6,31,000/-. The appeal is liable to be allowed to that extent.

In the result, the appeal is partly allowed setting aside the award of Rs.6,31,000/- instead, the claimants are entitled to a sum of Rs.5,14,000/- with proportionate costs and interest at 7.5% p.a. from

the date of petition till its realization. Both the claimants, who are father and mother of the deceased, are entitled to 50% of the compensation, which they are entitled to withdraw without furnishing any security.

M.S.K.JAISWAL, J.

Dated: 28.06.2017
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THE HON'BLE SRI JUSTICE
M.S.K.JAISWAL



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