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

M.A.C.M.A.No.1422 of 2010

JUDGMENT

The appellants/claimants preferred this appeal against the order and decree dated 23.06.2010 passed in O.P.No.245 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge at Nalgonda.

2. The facts, in brief, are that on 10.01.2007 at about 8.30 PM., one Gogula Yadaiah @ Iddaiah was proceeding on Hero Honda motorcycle bearing No.AP 29-N-7292 from Nalgonda to Kistrainpally village and when he reached the outskirts of Narsimhapuram village, an auto bearing No.AP-28-W-8208 driven by its driver in a rash and negligent manner with high speed and dashed against the motorcycle from opposite direction, as a result of which, said Yadaiah sustained grievous injuries all over the body. Immediately, he was shifted to OGH, Hyderabad, where he succumbed to injuries while undergoing treatment. The claimants being legal representatives of deceased Yadaiah filed the claim petition claiming compensation of Rs.3,50,000/- under various heads against respondents 1 and 2 being owner and insurer of the crime vehicle.

3. R1 remained *ex parte* and R2 filed counter denying the averments made in the claim petition.

4. Based on the pleadings, the Tribunal framed three issues. During enquiry, P.Ws.1 and 2 were examined and Exs.A1 to A5

were marked on behalf of claimants. No evidence was adduced on behalf of respondents, but Ex.B1 was marked.

5. After considering the entire evidence on record, the Tribunal awarded compensation of Rs.2,01,000/- to the claimants with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization.

6. Learned counsel for appellants/claimants submits that the deceased was earning a sum of Rs.5,000/-per month as labourer at the time of accident and was maintaining the claimants being wife, two children and parents, but the Tribunal erred in taking the income of deceased at Rs.1500/-per month and awarded lesser compensation under the head of loss of income.

7. Learned Standing Counsel for respondent No.2-insurance company contended that the compensation awarded by the Tribunal is excessive and exorbitant and there is no need to interfere with by this Court.

8. It is, no doubt, true that the claimants have not produced any evidence to show the monthly income of the deceased. As per Ex.A3-post mortem certificate, the age of deceased was 40 years at the time of accident. Since the deceased was maintaining his family consisting of wife, two children and parents, it would be just and reasonable to assess his monthly income at Rs.2,500/- per month instead of Rs.1,500/- per month as taken by Tribunal and annually, it comes to Rs.30,000/-, and if 1/3rd is deducted towards his personal

expenses, it comes to Rs.20,000/- and after applying multiplier '16', the loss of earnings would come to Rs.3,20,000/-. In addition to it, a sum of Rs.10,000/-towards loss of estate, Rs.10,000/-towards loss of love and affection, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transportation charges is awarded to the claimants. In total, a sum of Rs.3,50,000/- is awarded as compensation to the claimants. Thus, the compensation awarded by Tribunal is enhanced from Rs.2,01,000/- to Rs.3,50,000/- with interest at 7.5% per annum from the date of petition till the date of deposit.

9. In the result, the appeal is allowed in part modifying the impugned award passed by Tribunal, by enhancing the compensation from Rs.2,01,000/- to Rs.3,50,000/- with interest at 7.5% per annum payable by respondents 1 and 2 jointly and severally from the date of petition till the date of deposit. Respondents 1 and 2 are directed to deposit the enhanced amount of compensation within a period of two months from today. On such deposit, the first appellant being wife is permitted to withdraw 40% of the compensation, claimants 2 to 4 being the major sons and parents are permitted to withdraw 15% each of the compensation. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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M.S.K. JAISWAL, J.

21st June, 2017
sj