

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MACMA NO. 415 OF 2006

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CROSS-OBJECTIONS

COMMON JUDGMENT:

Heard both sides and perused the record.

The appeal is filed by the Insurance Company aggrieved by the award dated 6.12.2005 passed by the Motor Accidents Claims Tribunal, Karimnagar in OP No. 581 of 2004 granting compensation of Rs.2,20,000/- to the respondents/claimants.

Cross-objections are filed by the respondents 1 and 2/claimants seeking enhancement of compensation to Rs.3.00 lakhs.

For the sake of convenience, the parties are hereinafter referred to as they are arrayed before the Motor Accident Claims Tribunal.

The facts, in brief, are that on 27.3.2004 while the deceased Pesari Kumar @ Pesaru Kumar was returning home by bicycle after attending SSC examination at Peddapalli and when he reached near godowns at Bandampalli village, at about 2.30 P.M. a lorry bearing No. ADQ 7119 driven by first respondent, belonging to second respondent and insured with third respondent, came in rash and negligent manner and at high speed and dashed against the deceased behind him, as a result the deceased fell down and sustained injuries and he was shifted to Government Hospital, Peddapalli where he

succumbed to injuries at 3.00 P.M. on the same day. The petitioners filed the MVOP claiming a total compensation of Rs.3.00 Lakhs.

Second respondent remained *exparte* and no counter was filed by the first respondent. Third respondent-insurance company filed a counter denying all the allegations made by the petitioners in MVOP including the manner of accident and age of the deceased and putting the petitioners to strict proof of the same. The third respondent denied that the deceased completed 10th class examinations and that he was a bright student and would have earned Rs.5,000/- to Rs.6,000/- per month in future. The third respondent also contended that the first respondent-driver was not holding valid driving license on the date of accident and that the compensation claimed is highly excessive and exorbitant.

The petitioners examined PWs 1 and 2 and marked Exs.A1 to A9 and no oral evidence was adduced on behalf of respondents, however Ex.,B1—copy of insurance policy was marked with consent. On the basis of this evidence, the Tribunal found that the accident occurred due to the rash and negligent driving of the lorry by first respondent and in regard to compensation claimed by the petitioners, the Tribunal found that the deceased was aged about 16 years at the time of his death and he was studying 10th class and as he was a non-earning person, it took the age of his mother as 48 years, assessed the notional income of the deceased at Rs.15,000/- per annum and multiplied it with 13 and awarded compensation of Rs.1,95,000/- towards loss of life. The Tribunal awarded Rs.500/- towards

transportation charges, Rs.20,000/- for mental agony and loss of love and affection, Rs.2,000/- for funeral expenses and Rs.2500/- for loss of estate , total compensation of Rs.2,20,000/- to the petitioners.

The points for consideration are,

- 1) Whether the compensation amount awarded by the Tribunal is just and reasonable?
- 2) Whether the petitioners are entitled to enhancement of compensation amount?

POINTS:

As far as the negligence on the part of respondent No.1 in driving the crime lorry and insurance of the crime lorry with third respondent is concerned, there is no much contest. However, it is found from the evidence of P.W. 2 who was eye-witness to the accident and Exs.A1-copy of First Information Report, Ex.A2-copy of charge sheet, Ex.A3-copy of inquest report, Ex.A4-copy of post mortem report and Ex.A5-copy of Motor Vehicle Inspector's report that the accident occurred due to the rash and negligent driving of the lorry by the first respondent and that the death of deceased was caused due to the injuries sustained in the said accident. Further Ex.B1-insurance policy shows that the crime lorry was insured with the third respondent and it was valid on the date of accident. Therefore, in the facts and circumstances, no different findings can be substituted than the findings of the Tribunal. Accordingly I uphold the findings of the Tribunal in this regard.

Coming to the compensation part, learned standing counsel for third respondent-insurance company contended that the deceased was only 16 years at the time of his death and the compensation awarded by the Tribunal is highly excessive and the Tribunal ought not have granted the huge compensation amount.

On the other hand, learned counsel for the petitioners/claimants contended that the Tribunal granted a meagre compensation of Rs.2,20,000/- which is not just and reasonable and claimed grant of higher compensation by relying upon decisions of the Hon'ble Supreme Court rendered in *Kishan Gopal and another Vs. Lala and others*¹ and *Sarla Verma Vs. Delhi Transport Corporation*².

In *Kishan Gopal Vs. Lala* (1st supra) the deceased was aged 10 years at the time of his death and his notional income was taken as Rs.30,000/- and taking the age of deceased's mother as 36 years and by applying a multiplier of 15 as per the legal principles laid down in case of *Sarla Verma Vs. Delhi Transport Corporation* (2nd supra), the Hon'ble Supreme Court granted compensation of Rs.30,000 x 15 = Rs.4,50,000/- towards loss of life and Rs.50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites.

In the instant case, as per the evidence, the petitioners are the parents of deceased. Ex.A7 is the copy of SSC pass certificate, Ex.A8 is the certificate issued by Head Master, ZPSS, Appannapet and

¹ 2013 (6) ALD 59 (SC)

² 2009 (3) ALD 83 (SC)

Ex.A9 is the hall ticket of the deceased to appear for SSC examination. All these documents coupled with evidence of P.W.1 who is mother of the deceased, clinchingly establishes that the deceased was 16 year-old at the time of his death, as his date of birth is 10.10.1988 and he passed 10th class in first division having got marks of 419. P.W.1, the mother of deceased states in her evidence that her deceased son was hale and healthy, and the boys in the village earn Rs.100/- per day as collie worker. In the circumstances, it can be taken that the deceased was 16 year-old at the time of accident and passed SSC and he was hale and healthy and had he been alive, he would have certainly contributed substantially to the family of the petitioners by working hard.

As per the record, the accident and the death occurred on 27.3.2004 and the income relating to that period in an area where the deceased and his family members are residing is required to be taken into account to assess and award the loss of dependency. In view of the circumstances of this case, it is just and reasonable to take his notional income at Rs.20,000/- per annum and by applying a multiplier of 18 as per the decision of the Hon'ble Supreme Court in *Sarla Verma Vs. Delhi Transport Corporation* (2nd supra), it would come to Rs.20,000x18=Rs.3,60,000/- and 1/3rd is deducted towards personal expenses of the deceased, Rs.2,40,000/- would be the total loss of dependency, to which the petitioners are entitled to. In addition, the petitioners are also entitled to Rs.50,000/- towards conventional heads i.e., loss of love and affection, funeral expenses,

last rites as held in *Kishan Gopal Vs. Lala* (1st supra). Thus the petitioners are entitled to a total compensation of Rs.2,90,000/- (Rupees Two Lakhs and Ninety Thousands only) with interest @ 7.5 P.A. from the date of petition till the date of payment. Both the petitioners are entitled for equal compensation. The petitioners are permitted to withdraw the entire compensation amount. There is no change in other terms and conditions imposed by the Tribunal.

Accordingly the appeal is dismissed and cross-objections are allowed in part. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

Dt. 24.1.2017
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Dr. SHAMEEM AKTHER, J

