HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.370 of 2006

JUDGMENT :

This Civil Miscellaneous Appeal is preferred by the appellants – petitioners, aggrieved by the judgment and decree dated 13.08.2002 in O.P.No.805 of 1999 passed by the III Motor Accidents Claims Tribunal, Warangal (for brevity "the Tribunal"), whereby a total compensation of Rs.2,48,000/- was awarded, as against the claim of Rs.5,00,000/- made by the petitioners, who are the legal heirs of the deceased – Kandekatla Bixapathy, who died in a motor accident that occurred on 22.01.1999, with interest at 9% per annum from the date of petition till the date of realization.

2. Though notice is served on respondent No.2 – Insurer, none entered appearance till date. The claim made against respondent No.1 – owner of the offending vehicle was dismissed for default by order dated 14.07.2016. However, dismissal of appeal for default against the respondent No.1 - owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in MEKA CHAKRA RAO v. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS[1].

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[1] 2001(1) ALT 495 (D.B.)

3. Learned counsel for the appellants-petitioners contended that the deceased, who was aged 28 years at the time of death, was husband of the 1st petitioner, father of petitioner Nos.2 and 3; and son of petitioner Nos.4 and 5. He contends that though the deceased was doing Kirana business, besides doing agriculture, and earning Rs.5,000/- per month, the Tribunal has erroneously taken the income of the deceased as Rs.1,500/- per month and assessed the loss of dependency. The Tribunal also erred in granting a meager amount of Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.2,000/- towards transport expenses. The Tribunal also failed to consider the entitlement of the appellants-petitioners on other source and ultimately prayed to enhance the compensation to Rs.5,00,000/-.

4. During the course of enquiry, the appellants-petitioners have examined P.Ws.1 and 2 on their behalf and marked Exs.A.1 to A.6. On behalf of the respondents, none were examined, except marking Ex.B.1 copy of comprehensive policy.

5. Basing on the material on record, the Tribunal has framed the following issues:

(i) Whether the accident took place due to rash/and/or negligent driving by driver of vehicle No.AP 15G 6777?

(ii) To what compensation if any the petitioners are entitled to? If so, against whom?

(iii) To what relief?

6. While dealing with these issues, the Tribunal has carefully considered the material and evidence on record, particularly the evidence of P.Ws.1 and 2 and the documentary evidence under Exs.A.1 and A.2, which are copy of F.I.R. and copy of Inquest Report, respectively, Ex.A.3 – copy of Post Mortem Report and Ex.A.6 – copy of Charge Sheet. From a perusal of the evidence of P.Ws.1 and 2 and the documents referred supra clearly establishes the rash and negligent driving on the part of the driver of the crime vehicle No.AP 15G 6777 in causing death of the deceased. The findings of the Tribunal in that regard are based on evidence on record and there is nothing to substitute the same.

7. In the light of the submissions made on behalf of the appellants-petitioners, the point for determination in this appeal is, whether the compensation of Rs.2,48,000/- awarded by the Tribunal is just and reasonable?

8. There is evidence of P.W.1 – wife of the deceased to the effect that her husband was selling daily goods worth about Rs.200/- to Rs.300/- per day and earning Rs.6,000/- per month and he was also doing agriculture and used to spend the entire amount on the appellants-petitioners. Though the appellants-petitioners contended that the deceased was doing

kirana business and earning Rs.6,000/- per month, besides doing agriculture, they have not filed a single piece of documentary evidence to substantiate their claim. There is ample evidence on record to establish that the deceased was earning and the appellants-petitioners are dependent on the deceased. The instant death occurred on 22.01.1999. The income of the deceased at Rs.1,500/- per month, taken by the Tribunal is very low. Therefore, in the facts and circumstances of the case, it is appropriate to take the income of the deceased at Rs.2,000/- per month, in which case the income of the deceased comes to Rs.24,000/- per annum. As per the record, the deceased was aged 28 years. As per the law laid down by the Hon'ble Supreme Court in SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION AND ANOTHER[2], a deduction of 1/3rd of annual income is permissible towards personal living expenses of the deceased, which comes to Rs.8,000/- per annum, and when the same is deducted from the annual income of Rs.24,000/- of the deceased, the contribution to the family works out to Rs.16,000/-. Since the deceased was aged 28 years old, as per the very same decision in SARLA VARMA's case (supra 1), the multiplier factor '17' is applicable and, in which event, the loss of dependency works out to Rs.2,72,000/- (Rs.16,000/- x 17). The amount of Rs.15,000/- granted by the Tribunal towards consortium is very less and hence the same is

[2] (2009) 6 Supreme Court Cases 121

enhanced to Rs.25,000/-. Further, the amounts of Rs.15,000/- granted towards loss of estate, so also Rs.2,000/- granted towards transportation charges are maintained. The Tribunal has not granted any amount towards loss of love and affection to the minor children. Therefore, on this score, the appellants-petitioners are entitled for a sum of Rs.26,000/-.

9. Thus, the petitioners are entitled to a total compensation of Rs.3,40,000/- (Rs.2,72,000/- towards loss of dependency + Rs.25,000/- towards consortium + Rs.15,000/- towards loss of estate + Rs.2,000/- towards Transport charges + Rs.26,000/- towards love and affection) with interest @ 7.5% per annum, which is in tune with the decision of the Hon'ble Supreme Court in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS[3].

10. As seen from the record, Ex.B.1 – copy of comprehensive policy is valid as on the date of accident and there is nothing to take a different opinion in taking the liability against respondent – 2 – Insurer. Therefore, the Tribunal has rightly held that respondent Nos.1 and 2, who are owner and insurer of the crime vehicle, are jointly and severally liable to pay compensation.

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from

[3] 2013 ACJ 1403

Rs.2,48,000/- to Rs.3,40,000/- (Rupees three lakhs forty thousand only) with interest @ 7.5% per annum from the date of the petition till realization. All the appellants-petitioners are entitled to share the enhanced amount of compensation equally and permitted to withdraw the same. There shall be no order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dr. JUSTICE SHAMEEM AKTHER

07.04.2017.
Msr

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