THE HON'BLE DR JUSTICE SHAMEEM AKTHER

MACMA.NO.1044 OF 2007

JUDGMENT:

Heard the learned counsel for the appellants and perused the record.

The appeal against respondent No.1-owner of DCM Van bearing No.AP-21-T-6138 was dismissed on 08.07.2016 for default. However, dismissal of the appeal for default against 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], wherein it is held that:

> "If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

It is also relevant to state that though a notice was served on the insurer, none entered appearance till date.

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

Learned counsel for the appellants would submit that the deceased was 18 years old on the date of the occurrence of the accident and he was working in a hotel and earning Rs.3,000/- per month. The appellants are the parents of the deceased. The deceased was a bachelor. The Tribunal has taken Rs.2,000/- as his monthly income and awarded compensation after deducting 1/3rd towards his personal expenses and applying '16' multiplier, since the deceased was 18 years old but the correct multiplier to be applied is '18' and the compensation is required to be assessed at 50% of the individual earnings of the deceased. The Tribunal has granted very meagre compensation towards funeral expenses as well as towards loss of estate. In all, the Tribunal is not correct in awarding compensation of Rs.1,55,000/- against the claim of Rs.4,59,500/- and ultimately, prayed to enhance the compensation.

The material on record reveals that the deceased in this case by name A.Murali was aged about 17 years old (as per Ex.A3) on the date of the accident and was working in a hotel and earning Rs.2,500/- per month. There is evidence of P.Ws.1 and 2 with regard to occupation and earnings of the deceased. There is also evidence of P.W.1 that the deceased, A.Murali, died due to rash and negligent driving by the driver of DCM Van bearing No.AP-21-T-6138. There is also evidence to believe that the said van was owned by R-1 and insured with R-2 under the policy marked as Ex.B1. None was examined on behalf of the respondents. There is no violation of terms of the policy marked under Ex.B1. The Tribunal awarded compensation of Rs.1,57,000/- with 7.5 % interest per annum from the date of filing of the petition till the date of realisation. While awarding the said compensation, the Tribunal has taken the monthly income of the deceased at Rs.2,000/- per month; 2/3rd is deducted; 1/3rd amount is only taken as personal expenses of deceased and has taken multiplier ‘16’ to assess the loss of dependency, assessed the loss of dependency at Rs.1,48,200/- but granted Rs.1,50,000/- and thereafter, awarded Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate.

It is appropriate to refer to the decision rendered in **Munnalal Jain and others v. Vipin Kumar Sharma and others[2]**, wherein it is held that when the deceased is a bachelor, the relevant multiplier to his age group is to be taken into consideration and half of his earnings are required to be deducted towards his personal expenses. Claimants are his parents and then the amount payable on the score of loss of dependency has to be assessed. As seen from the evidence on record, the deceased in this case was 17 years old. There is nothing to disbelieve that he was not working in a hotel and earning Rs.2,500/- per month. It is quite possible for the age group of 17 years working in a hotel and making earnings in the year 2004. Relying on this, the loss of dependency payable to the appellants, who are parents of the deceased, is required to be calculated. So, the suitable multiplier as in **Sarla Verma & Others v. Delhi Transport Corporation[3]** for the age of 17 years is ‘18’. Hence, Rs.2,500/- X 12 = 30,000 X ‘18’ = 5,40,000/-. 50% of the same comes to Rs.2,70,000/-. The appellants are entitled for Rs.2,70,000/- towards loss of earnings. In addition to that, the appellants are entitled for Rs.15,000/-

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[2] (2015) 6 SCC 347
[3] (2009)6 SCC 121

instead of Rs.2,000/- towards loss of estate and Rs.15,000/- towards funeral expenses instead of Rs.2,500/-. In all, the appellants are entitled to compensation of Rs.3,00,000/-. There is no violation of terms of insurance policy and there is valid insurance on the date of the accident. There is also evidence to believe that the accident occurred due to rash and negligent driving by the driver of the DCM Van bearing No.AP-21-T-6138. The finding recorded by the Tribunal is sustained. There are no circumstances to vary the other conditions imposed by the Tribunal.

In the result, the appeal is allowed in part enhancing the compensation from Rs.1,55,000/- to Rs.3,00,000/- along with interest @ 7.5% from the date of filing till the date of realisation. Both the appellants are entitled to share the enhanced compensation equally. On deposit, both of them are permitted to withdraw the same. The other terms of the order under challenge remained unchanged. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(DR. SHAMEEM AKTHER, J)

26th July 2017
RRB