THE HON'BLE DR JUSTICE SHAMEEM AKTHER

M.A.C.M.A.NO.1375 OF 2005

JUDGMENT:

Heard both the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record.

The parties herein are referred to as they were arrayed before the Tribunal.

The appeal against respondent No.1-owner was dismissed for default on 03.01.2012. 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."

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

In the circumstances of the case, in the absence of respondent No.1, the quantum of compensation payable to the appellants can be determined.

Learned counsel for the appellant would submit that the deceased was 20 years old and he was pursuing Hotel Management Course. The appellants are his parents. The age of the mother deceased was 45 years by the date of the accident. The Tribunal had taken the income of the mother of the deceased as Rs.1,000/- per month and applied '15' multiplier and determined loss of dependency and ultimately, granted compensation of Rs.1,97,000/- against the claim of Rs.8,00,000/- made, which is very meagre and prayed to enhance the same.

On the other hand, learned counsel for the respondent-insurer would submit that the accident pertains to the year 2000 and the Tribunal had taken all the facts into consideration and had rightly determined the compensation payable to the appellants and there are no grounds to enhance the same and ultimately, prayed to dismiss the appeal.

In view of the contentions put forth by both the sides, the short point that has come up for determination is whether the appellants are entitled for enhancement of compensation as prayed for.

It is evident from the record that the deceased by name T.Srikar was 20 years old and he was studying second year Hotel Management Course and met with an accident and died on 08.10.2000. The Tribunal had taken the age of the mother of the deceased as 45 and her income as Rs.1,000/- per month and granted Rs.1,80,000/- towards loss of dependency and

Rs.15,000/- towards loss of love and affection and another sum of Rs.2,000/- towards funeral expenses. In all, the Tribunal granted compensation of Rs.1,97,000/-.

Learned counsel for the appellants relied on a decision reported in **Lakkamsani Hanuman Prasad v. G.Nagendra Goud**[2] wherein learned Single Judge of this Court held as under.

> "In this case, the deceased was aged about 16 years and he was studying 10th class. He was the only son of his parents. Even if 10th class qualification is taken, the deceased would have secured a job with minimum basic of Rs.6,000/- per month. Even if 50% is deducted towards personal expenditure, the loss of earnings would be Rs.3,000/- per month and the annual loss would be Rs.36,000/-. The appropriate multiplier applicable to the instant case is 18. Thus, the total loss of earnings would come to Rs.6,48,000/-. The claimants are also entitled for Rs.1,00,000/- towards loss of Estate and Rs.25,000/- towards funeral expenses."

As per the evidence on record, the appellants have got two sons and one of them died in the accident whereas in the above referred citation, the deceased was the only son of the claimants therein. The incapabilities depend upon the evidence adduced in the trial Court.

In view of the facts and circumstances of the case, the notional income of the deceased can be taken as Rs.4,000/- per month as he was a second year Hotel Management student. His annual income comes to Rs.48,000/-. As the age of the mother of the deceased was 45 years, the suitable multiplier for the age of 45 as per **Sarla Verma & Others v. Delhi Transport Corporation**[3] is '14' and since the deceased was a bachelor 50% of the same required to be deducted towards personal expenses. Then the loss

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[2] 2015(4) ALT 63
[3] (2009)6 SCC 121

of dependency caused to the appellants comes to Rs.3,36,000/- (Rs.48,000/- X 14 = Rs.6,72,000 X 50% = Rs.3,36,000/-). The Tribunal had granted Rs.15,000/- towards loss of love and affection, which is meagre. In the circumstances of the case, it is enhanced to Rs.50,000/-. Further, the Tribunal has granted Rs.2,000/- towards funeral expenses, which is also meagre. The same is also enhanced to Rs.25,000/-. In all, the appellants are entitled for a compensation of Rs.4,11,000/- (Rs.3,36,000- + Rs.50,000/- + Rs.25,000/- = Rs.4,11,000/-) with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation. Both the appellants shall share the compensation awarded equally. The respondents are jointly and severally liable to pay the compensation to the appellants. Both the appellants are permitted to withdraw 75% of the compensation awarded and the total costs. The remaining 25% of the compensation awarded is ordered to be kept in Fixed Deposit in a Nationalised Bank for a period of three (3) years. On completion of the said three years period, both the appellants are entitled to withdraw the same equally. The appellants shall deposit the balance Court fee and on such deposit, the Registry is directed to prepare the decree.

The appeal is, accordingly, allowed in part. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(DR. SHAMEEM AKTHER, J)

18th August 2017
RRB