THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4509 of 2003
&
CIVIL MISCELLANEOUS APPEAL No.2249 of 2004

COMMON JUDGMENT:

The former appeal is preferred by the insurer questioning the quantum of compensation awarded by the order and decree dated 04.08.2003 in M.V.O.P.No.614 of 2001 passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge at Kurnool (for short 'the Tribunal').

The latter appeal is preferred by the petitioners-claimants in the said O.P seeking enhancement of compensation awarded by the Tribunal in the said O.P.

By the aforesaid order and decree, for the death of M.Thirupal Reddy, his legal heirs, who are the claimants numbering 1 to 9, sought a total compensation of Rs.8,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The Tribunal has framed three issues for determining the compensation as well as fixing the responsibility or liability to pay the same. During enquiry, P.Ws.1 and 2 were examined, amongst whom P.W.2 is an eye witness, and Exs.A1 to A7 were marked. On behalf of the insurer - respondent No.2 in the M.V.O.P., the copy of the insurance policy was marked as Ex.B1, but no witnesses were examined.

The Tribunal, on appraisal of evidence, both, oral and documentary let in by the petitioners, by holding that the petitioners 2 to

8 are married daughters and considering the age of the deceased as 50 years and applying the multiplier factor '13' as provided under the Second Schedule to Section 163-A of the Act and the contribution to the family at Rs.80/- per day, keeping in view, the documentary evidence marked as Exs.A5 to A7, which are pattadar pass book, certificates issued by the Assistant Engineer, APCPDC Limited, Operation, Dhone, and two receipts issued by one Venkata Sai Borewells, Dhone, arrived at Rs.3,74,400/- towards loss of dependency. Besides the same, the Tribunal also granted Rs.2,000/- towards funeral expenses, Rs.20,000/- towards loss of estate and Rs.5,000/- towards loss of consortium so far as petitioner No.1 is concerned and awarded interest at 9% per annum and apportioned the amount mainly between petitioner No.1 and petitioner No.9, but, however, allotted Rs.25,000/- to each of the petitioners 2 to 8. From the findings recorded in paragraph '7' under issues 2 and 3, it is clear that the Tribunal has treated petitioners 2 to 8 as not dependents.

Heard Sri A. Jaya Sankara Reddy, learned counsel for the appellants in CMA.No.2249 of 2004, and Sri E.Venugopal Reddy, learned Standing Counsel for the insurer in both these appeals.

The submission of the learned Standing Counsel for the insurer is that the Tribunal granted compensation exceeding the amount to which the petitioners are entitled, and, thus, the quantum of compensation is questioned by the insurer, besides questioning the multiplier factor '13' applied by the Tribunal and even non-deduction of 1/3rd towards personal expenses.

Per contra, learned counsel for the claimants would submit that despite the documentary evidence in abundance proving that the deceased Thirupal Reddy was owning and possessing more than Ac.16.00 of land as could be seen from Ex.A5 – pattadar pass book, the Tribunal did not properly appreciate the evidence and thereby taken the contribution without referring to what would be the earnings of the deceased. It is also his submission that there has been three bore wells as could be seen from the material placed on record and, therefore, sought to grant the balance amount.

The fact-situation since not in dispute, there is no need to advert to it once again, though, there are cross appeals preferred by the claimants and the insurer.

Turning to whether the contribution based on the income taken by the Tribunal was meagre or adequate and would account for reasonable loss of supervisory charges based on documentary evidence, the amount of Rs.80/- per day indicates that the Tribunal has taken the monthly income at Rs.2,400/- or annual income at Rs.28,800/-. Though, the petitioners filed documents Exs.A5 to A7, there is no material to show what were the crops raised and what was the income actually derived by supplying the produce to the market yard. The Tribunal has not indicated whether the amount of Rs.80/- per day or Rs.2,400/- per month or Rs.28,800/- per annum is the contribution to the family after deducting $1/3^{rd}$ of the annual income. But, when examined the documentary evidence, it is clear that the deceased owned 18 acres of land and that three bore-wells are being sunk and water is being used to feed the lands and raise the crops. In fact, petitioner Nos.2 to 8 are married daughters and it is difficult to hold that they are dependants on the deceased. Thus, only petitioner Nos.1 and 9 can be construed as dependants on the deceased. Therefore, the amount of Rs.80/- per day or Rs.2,400/- per month or Rs.28,800/- per annum is treated as the contribution to the family after deducting $1/3^{rd}$ from his earnings. When the same is multiplied with multiplier factor '13', the loss of dependency would work out to Rs.3,74,400/- [Rs.28,800/- x 13]. In such an event, certainly, the multiplier factor applied by the Tribunal cannot be faulted.

Turning to whether the petitioners are entitled to any enhancement, in view of the fact that they do possess agricultural lands, though, entitled to supervisory charges, still, towards future prospects, as per the law declared by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1], they are entitled to 15% in addition to the amount determined towards the contribution, which works out to Rs.56,160/-. Towards conventional sums, as against the amounts awarded by the Tribunal, they are entitled to Rs.50,000/-. Thus, the petitioners are totally entitled to Rs.4,80,560/-. The interest awarded by the Tribunal at 9% per annum is affirmed since there is no challenge to it by the insurer. However, on the enhanced amount, the claimants are

[1] 2013 ACJ 1403

entitled to interest at 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh'**s case referred supra.

Accordingly, CMA.No.4509 of 2003 is dismissed and CMA.No.2249 of 2004 is partly allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand closed.

JUSTICE A.SHANKAR NARAYANA

08.08.2017
v v