

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CMA.No.3858 OF 2004

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking enhancement of compensation on the ground that the amount of Rs.65,000/- awarded by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad, by the order dated 12.08.2004 in O.P.No.152 of 2002, is on lower side.

2. The appellants herein, who are the natural father, step mother and siblings of one Jayabaye Patlobha (deceased), whose death occurred in a road accident, are the petitioners-claimants in the aforesaid O.P. In fact, the aforesaid O.P and O.P.No.632 of 2001 were taken up together, as the claims in both the O.Ps relate to the death of the said Jayabaye Patlobha, a driver of Heavy Vehicles by profession according to the licence he possessed, but, on the date of accident, the deceased was travelling in a jeep, which met with an accident, but he was not driving the jeep.

3. The claim in the other O.P i.e., O.P.No.632 of 2001 was laid by his natural mother and younger brother seeking a sum of Rs.2,00,000/- as compensation under Section 166 and 163-A of the Act. They mentioned the age of the deceased as 26 years.

4. The Tribunal has taken fixed income of the deceased at Rs.1800/- per month and, having deducted 50% thereof towards his personal living expenses and taking the average age of the parents of the deceased as 48 years, applied multiplier factor '13' and arrived at Rs.1,40,400/- towards loss of dependency. Towards non-pecuniary compensation on all other heads, a sum of Rs.10,000/- was granted. In all, the Tribunal awarded a total sum of Rs.1,50,400/- as compensation and apportioned the same to the petitioners in both O.Ps i.e., Rs.85,400/- to the petitioners in O.P.No.632 of 2001, whereas Rs.65,000/- to the petitioner No.1 alone in O.P.No.152 of 2002, while dismissing the claim of petitioner Nos.2 to 6 in O.P.No.152 of 2002. The amounts in both O.Ps were also apportioned, which details have been mentioned in paragraphs '20' and '21' of the orders passed by the Tribunal.

5. Heard Sri S.Surender Reddy, learned counsel for the appellants – petitioners in O.P.No.152 of 2002. No representation for respondent Nos.1 and 2. Respondent No.3, though, received notice, has not entered appearance.

6. Learned counsel for the appellants would submit that the Tribunal went wrong in taking monthly earnings of the deceased at Rs.1,800/- and, from the very fact that the deceased possessed a driving licence to run heavy transport vehicles, the Tribunal ought to have believed the version of the petitioners and fixed the income at

Rs.5,000/- per month and ought to have determined the compensation basing on the said income.

7. The Tribunal has taken up discussion in paragraph '18' of the order observing that except Ex.A7, the driving licence of the deceased, the petitioners have not filed any record to show that the deceased was employed as driver of a particular lorry belonging to a particular owner. On that ground, the Tribunal has fixed the income at Rs.1,800/- per month.

8. Learned counsel for the appellants, no doubt, would contend that the amount of Rs.1,800/- taken as monthly income of the deceased is totally inadequate and, in fact, the decisions rendered by the Hon'ble Supreme Court are to the effect that even a coolie must be earning around Rs.3,000/- per month or Rs.36,000/- per annum and, therefore, requests to consider what has been pleaded by the petitioners as to the monthly earnings of the deceased.

9. One thing is certain that petitioner No.1 in O.P.No.152 of 2002 is the natural father of the deceased, but, it is not forthcoming anywhere that he was totally dependent on the deceased. The second vital circumstance is that it is not the case of the petitioners that the deceased was residing along with them as a member of their family. So far as the other claim petition in O.P.No.632 of 2001 is concerned, it is clear that the deceased was the bread earner of his natural mother and younger brother. That ought to be considered as the real claim and the petitioners therein are only entitled for compensation amount that

would be determined, but not appellant No.1 herein, as he had re-married and got four children, who figured as appellant Nos.3 to 6 herein and are projected as minors, as could be seen from the cause title, and it is really strange and un-understandable as to how they all can be construed as dependants on the deceased. When viewed in that context, certainly, the present appeal is not at all maintainable and whatever the Tribunal has already awarded and granted to appellant No.1 in O.P.No.152 of 2002 cannot be disturbed, as there is no challenge to it by any of the respondents or the claimants in other O.P.

10. Accordingly, the instant appeal is dismissed, confirming the order passed by the Tribunal in O.P.No.152 of 2002 so far as the amount granted to appellant No.1 is concerned. However, this order does not come in the way of deciding the appeal, if at all preferred by the claimants in O.P.No.162 of 2001.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

JUSTICE A.SHANKAR NARAYANA

12th October, 2017

v v