IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH

* * *

M.A.C.M.A.No.213 of 2006

Between:

Giddaluri Kasthuramma (died)
Giddaluri Naga Jyothi and others.

………Appellants

And

K. Sivaprakasam and another

……. Respondents

Date of Judgment pronounced on : 06.10.2017

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.213 OF 2006

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.... Appellants

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$K. Sivaprakasam and another

... Respondents

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> HEAD NOTE:

!Counsel for the appellants : Sri M. Venkata Narayana

^ Counsel for the respondents : None appeared

? Cases referred

1. MANU/SC/7089/2008
2. MANU/SC/7776/2007
3. MANU/SC/7915/2007
4. (2007) 3 SCC 538
5. 2009 (6) SCC 121

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.213 of 2006

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants/petitioners seeking enhancement of compensation challenging the order and decree dated 26.10.2005 in O.P.No.585 of 2003 passed by the Motor Vehicles Accident Claims Tribunal (Principal District Judge), Nellore (for brevity "the Tribunal"), awarding compensation of Rs.1,70,000/- with interest at 7.5% per annum as against the claim of Rs.4,00,000/- laid by them under Section 166 of the Act, for the death of the deceased – Nagaraju in a motor accident that occurred on 27.05.2003.

2. The brief facts of the case are that the appellants are the petitioners, who filed O.P.No.585 of 2003 claiming compensation of Rs.4,00,000/- against respondent Nos.1 and 2, who are owner and insurer, respectively, of the offending Lorry, for the death of the deceased – Nagaraju, aged 27 years, in a motor accident that occurred on 27.05.2003 at 2.10 a.m., stating that while the deceased was running a Hotel at Ananthavaram village, the driver of the lorry bearing No.NL.01/A-5843 drove it in a rash and negligent manner

and dashed against the hotel, as a result of which, the deceased died instantaneously.

3. Before the Tribunal, respondent No.1 – owner of the offending vehicle remained exparte and the 2nd respondent – insurer alone contested the claim by filing counter denying its liability and contending that the quantum of compensation claimed is highly excessive and untenable.

4. After considering the pleadings and evidence available on record, vide order and decree dated 26.10.2005, the Tribunal awarded a compensation of Rs.1,70,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till realization payable by respondent Nos.1 and 2 jointly and severally. Having dissatisfied with the said compensation, the petitioners have filed the present Civil Miscellaneous Appeal seeking enhancement of compensation.

5. Heard Sri M. Venkatanarayana, learned counsel for the appellants–petitioners. Though notice is served on the 2nd respondent – insurer, none appeared on their behalf. Perused the order under challenge and also the evidence on record.

6. The only point that arises for consideration in this appeal is, whether the appellants are entitled for enhancement of compensation?

7. Learned counsel for the appellants submitted that though the age of the deceased was 27 years old by the date of accident and he was earning Rs.150/- per day, the Tribunal has taken the income of the deceased @ Rs.40/- per day and @ Rs.1,200/- per month, which is very meager. His main argument is with regard to the notional income of the deceased adopted by the Tribunal at Rs.1,200/- per month in assessing the compensation.

8. At the outset, it is obvious that the Tribunal has answered issue No.1 in favour of the appellants holding that the accident occurred due to the rash and negligent driving of the driver of the crime lorry. The said fact has not been disputed by the insurer of the crime vehicle by filing any appeal or cross-objections. Therefore, there is no dispute with regard to the liability of the 2nd respondent – insurer. The dispute is only with regard to the quantum of compensation awarded by the Tribunal.

9. The Tribunal has taken the notional income of the deceased as Rs.1,200 per month @ Rs.40/- per day, as he was working as daily wage labourer. No doubt, there is no proof with regard to the income of the deceased and hence the Tribunal has taken his income at Rs.1,200/- per month, which appears to be on lower side. Therefore, in the light of the catena of decisions rendered by the Apex Court in

Ramesh Singh v. Satbir Singh*[1]*, New India Assurance Company Ltd. v. Smt. Shanti Pathak*[2]*, Oriental Insurance Co. Ltd. v. Syed Ibrahim*[3]*, New India Assurance Co. Ltd., v. Kalpana (Smt)*[4]*, a minimum of Rs.3,000/- per month can be taken as the monthly income of a person working in an unorganized Sector.

10. In the instant case, there is also a dispute with regard to the age of the deceased. Though the learned counsel for the appellants contends that the age of the deceased was 27 years, the appellants have not produced any proof in that regard, therefore, the Tribunal has taken the age of the deceased as 35 years notionally basing on the age of his children. However, this Court is not inclined to delve into the said aspect of fixing the age of the deceased, since the Tribunal has already taken the age of the deceased as 35 years, which in my considered view is probable age of the deceased having grown up children of 13 years old. As per the decision in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another***[5], the appropriate multiplier for the age group of the deceased at 35 years is '16'. If the income of the deceased is taken as Rs.2,500/- per month, after deducting 1/5th towards personal expenses of

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[1] MANU/SC/7089/2008
[2] MANU/SC/7776/2007
[3] MANU/SC/7915/2007
[4] (2007) 3 SCC 538
[5] 2009 (6) SCC 121

the deceased, the contribution to the family will come to Rs.2,000/- per month and Rs.24,000/- per annum. If the same is multiplied by the appropriate multiplier '16, it comes to Rs.3,84,000/-. Therefore, the appellants are entitled for a sum of Rs.3,84,000/- towards loss of dependency. Besides the same, the Tribunal has awarded non-pecuniary damages of Rs.15,000/- and if the same is added, it comes to Rs.3,99,000/-.

11. Thus the compensation awarded by the Tribunal is enhanced as mentioned below:

Compensation towards	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
1. Loss of dependency	1,53,600.00	3,84,000.00
2. Non-pecuniary damages	15,000.00	15,000.00
TOTAL :	1,68,600.00	3,99,000.00

12. In the result, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.1,70,000/- to Rs.3,99,000/- (Rupees three lakhs ninety nine thousand only) with proportionate costs and the enhanced amount also shall carry interest @ 7.5% per annum from the date of petition till the date of realization. The respondents are directed to deposit the compensation amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to

withdraw the same as per the apportionment made by the Tribunal. No order as to costs.

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

GUDISEVA SHYAM PRASAD, J

06.10.2017.

NOTE: L.R. Copy be marked.
(B/O)
Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.213 of 2006

06.10.2017
Msr