

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.3057 OF 2005

ORDER:

The order, dated 14-12-2004, passed by the I Additional District Judge, Medak at Sangareddy, in O.P.No.349 of 2002 is assailed by the claimants in the above mentioned O.P. with the main contention that the compensation amount of Rs.1,88,720/-awarded to them in respect of the death of Shaik Mansoor Ali (hereinafter referred to as 'the deceased') is not fair and reasonable.

2. The appellants main grievance is that the Tribunal instead of awarding compensation of Rs.4,00,000/-, has awarded meager compensation amount of Rs.1,88,720/- and that the compensation awarded by the Tribunal is not fair and meager. The 1st appellant has lost marital life in her young age. 2nd appellant has lost his father in his tender age. Appellants 3 and 4, who are the parents of the deceased have also lost love and affection of their son. The Tribunal without proper appreciation of evidence on record, which clearly establishes that Shaik Mansoor Ali (hereinafter referred to as 'the deceased') was working as a mechanic and was getting income of Rs.10,000/- per month, has fixed the income of the deceased at Rs.1500/- per month. No valid reason was recorded by the Tribunal to discard the testimony of P.W.1, wife of the deceased, who during the course of her examination stated that her husband was a mechanic by profession and was earning a sum of Rs.10,000/- per month. Since the evidence available in the case record has not been appreciated thoroughly by the Tribunal, gross injustice is caused to them and under these circumstances, they solicit the intervention of this Court.

3. The facts and circumstances as narrated by the appellants in their pleadings in brief are stated as under:

That on 06-06-2002, while the deceased was coming to Zaheerabad from Hyderabad in an auto bearing No. AP 9W 9504 along with spare parts of the auto was proceeding to Zaheerabad with normal speed, it was hit by a tanker bearing No. MH 04 H 7653 near Aroor village which came in a rash and negligent manner. The appellants asserted that while the tanker bearing No. MH 04 H 7653 was coming from Mumbai to Hyderabad, it was driven by the driver with high speed in a rash and negligent manner and hit to the auto in which the deceased was proceeding towards Zaheerabad. In the above said accident, the auto was completely damaged and all the occupants of the auto sustained grievous injuries. The deceased, who received severe head injury died on the spot. The deceased was aged about 28 years and was hale and healthy by the date of the accident and was getting an income of Rs.10,000/- per month by attending to the work of mechanic.

4. The main grievance of the appellants is that the evidence given by P.W.1 regarding income of the deceased has not been challenged by the respondents and no evidence of any sort is adduced by them to disprove her testimony in respect of the income of the deceased, the Tribunal has fixed the income of the deceased at Rs.1500/- per month. No valid reason is recorded by the Tribunal to discard the testimony of P.W.1, which has remained unchallenged.

5. It is contended by the learned counsel appearing for the appellants that in cases of death of a non earning members, the Tribunal ought to have taken the income at Rs.3,000/- per month by following the authoritative pronouncement made by the apex Court in case of **KISHAN GOPAL V LALA** ¹. Because of non production of evidence on

¹ (2014) 1 SCC 244

record by the Tribunal, no reasonable or fair compensation is awarded to them and hence, this Court can set aside the award passed by the Tribunal and pass appropriate order by awarding just and reasonable compensation.

6. In the instant case, the wife of the deceased was examined by the claimants to establish their case. Her evidence is that her husband was working as mechanic and was getting income of Rs.10,000/- per month. The respondent has not come forward with any kind of evidence for disproving the testimony of P.W.1. The material available in the case record itself establishes the fact that while the deceased was coming to Zaheerabad from Hyderabad along with spare parts in an auto, he met with a road accident. So far as the profession of the deceased is concerned, there is no controversy. The Tribunal ought to have taken the income of the deceased at Rs.3,000/- per month at least by fixing his income at Rs.100/- per day as a mechanic, but it has not been done so. If the income of the deceased is taken at Rs.3,000/- per month, loss of income per year comes to Rs.36,000/-. If one third of the income of the deceased is deducted towards his personal expenses, the contribution of his income to his family comes to Rs.24,000/- per annum. Since the deceased was aged about 35 years, the appropriate multiplier to be applied is 15 as per case law reported in **SARLA VERMA (SMT) AND OTHERS V DELHI TRANSPORT CORPORATION AND ANOTHER** ². The contribution of income of the deceased to his family members comes to Rs.3,60,000/- if the annual contribution of his income to his family members is multiplied by 15.

7. The Tribunal may have awarded a sum of Rs.15,000/- under the head of loss of consortium considering the fact that the 1st petitioner lost the company of her husband while she was at the age of 23 years. The Tribunal may have

² (2009) 6 SCC 121

awarded reasonable compensation under the head of loss of love and affection upon consideration of the fact that the appellants/claimants have lost love and affection of the deceased. Since no amount is awarded under this head, this Court award an amount of Rs.20,000/- under the head of loss of love and affection. Since no amount is awarded under the head of funeral expenses, this Court award a sum of Rs.5,000/- under the head of funeral expenditure.

8. In the light of the above discussion, this Court is of the view that the appellants/claimants are entitled to get total compensation of Rs.4,00,000/- (Rs.3,60,000/- (for loss of income) + Rs.15,000/- (for loss of consortium) + Rs.20,000/- (for loss of love and affection) + Rs.5,000/- (for funeral expenses)).

9. In the result, the appeal is allowed enhancing the compensation amount from Rs.1,88,720/- to Rs.4,00,000/-. The respondents 1 and 2 being the owner and insurer of the tanker bearing No. MH 04 H 7653 are held liable to pay the above mentioned compensation amount jointly and severally together with interest at 7.5% per annum from the date of filing of the petition till the date of realization. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 27th DAY OF APRIL, 2017.
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