

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A No. 2563 of 2013

JUDGMENT:

This appeal is arising out of the Award and Decree dated 10.05.2012 in O.P.No.675 of 2007 on the file of the Chairman, MACT-cum-II Additional District Judge, Ranga Reddy District, at L.B. Nagar, awarding compensation of Rs.4,25,000/- with interest at 7.5% per annum as against a claim of Rs.5,00,000/-.

2. The appellants are the legal representatives of the deceased who filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- on account of the death of V. Yadagiri in a road accident. As a matter of fact, on 06.03.2007, the deceased Yadagiri while proceeding on his scooter bearing No.AP 9AK 3894 from Shankarpally at about 7:30 PM and when he reached Satyam Farm House, a Hero Honda Passion Motorcycle bearing No.AP 28 AR 9928 came in opposite direction driven by its driver in a rash and negligent manner, crossed the stationed lorry and dashed the scooter of Yadagiri. The deceased fell down from the scooter and sustained injuries and he was shifted to Osmania General Hospital where he succumbed to injuries while undergoing treatment.

3. The 1st respondent-owner of the offending motorcycle, had remained ex parte. The 2nd respondent-insurer filed counter affidavit denying its liability. It is contended that the accident occurred due to the rash and negligent driving of the deceased who was driving the scooter at the time of accident without following the traffic rules. It is further stated that the pillion rider of the scooter lodged complaint with the police and

the police in collusion with the petitioners filed charge sheet against the rider of the motorcycle after the death of Yadagiri. There is no act of negligence on the part of the Hero Honda Motorcycle and therefore the petition is liable to be dismissed.

4. The Tribunal on consideration of the evidence of witnesses PWs.1 and 2 and the documents Exs.A1 to A7 and Ex.B1 held that the driver and insurer of the Hero Honda Motorcycle liable for payment of compensation of Rs.4,25,000/- with interest at 7.5% per annum. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellants who are the legal representatives of the deceased filed this appeal for enhancement of compensation.

5. Heard the arguments of learned counsel for the appellant Sri G.L.Narsimha Rao, and learned counsel for the 2nd respondent Sri C.L. Buchi Reddy.

6. It is contended on behalf of the appellants that the Tribunal has taken the income of the deceased as Rs.3,000/- per annum and applied the multiplier 17. The income of the deceased is to be enhanced as it is not in consonance with the minimum wages in those days. The personal expenditure of the deceased was reduced by 1/3rd though the legal representatives-dependents of the deceased are five in number and the Tribunal ought to have deducted 1/5th from the income of the deceased towards his personal expenses instead of 1/3rd. It is further argued that the compensation awarded by the Tribunal is inadequate in the light of the decisions rendered in the case of Rajesh v. Rajbir Singh¹ and

¹ 2013 ACJ 1403

Santosh Devi v. National Insurance Co. Ltd. and others², and therefore sought for enhancement of compensation.

7. It is argued on behalf of the 2nd respondent-insurance company that the appellants have not produced any proof to show that the deceased was driver and earning a specific amount of income. It is further submitted that as per the ratio laid down in Sarla Verma v. Delhi Transport Corporation³, the multiplier applicable to the age of the deceased is '16', but the Tribunal has taken the multiplier '17' which is one point higher than the actual applicable multiplier and therefore there is no need for enhancement of compensation in this case.

8. No doubt, in the case of Rajesh (1 supra) and Santosh Devi (2 supra), the Hon'ble Supreme Court awarded higher compensation based on the facts of those cases. As a matter of fact, in the instant case, the income of the deceased was taken as Rs.3,000/- per month which is the notional income for a labourer who works in an unorganized sector. Time and again, in a catena of decisions, the Hon' ble Supreme Court, have taken the minimum income of a labourer who works in an unorganized sector as Rs.3,000/-. But, in the instant case, the deceased was working as a driver and therefore, he can be considered as a skilled worker and he cannot be compared with ordinary labourer and therefore his notional income can be taken into consideration as Rs.3,600/- per month, which comes to Rs.43,200 per annum. As per Sarla Verma (3 supra), the deduction towards personal expenses of the deceased in case of five dependents is 1/5th of his income. Therefore, deducting 1/5th from Rs.43,200/-, we get Rs.34,560/- as the annual contribution of the

² 2012 ACJ 1428

³ (2009) 6 SCC 121

deceased to his family. Since the age of the deceased was 30 years by the date of the accident, the applicable multiplier as per Sarla verma (3 supra) is '17'. Therefore, applying multiplier '17', the loss of dependency would come to Rs.34,560 x 17 = Rs.5,87,520/-. Therefore, the appellants are entitled to a compensation of Rs.5,87,520/- towards loss of dependency on account of death of the deceased.

9. The deceased was survived by his wife and three minor daughters and therefore I am inclined to grant Rs.1,00,000/- to the wife, and Rs.40,000/- each to the three minor daughters towards loss of love and affection. The appellants are also entitled to Rs.50,000/- under conventional charges as per the judgment of the Hon'ble Supreme Court in the case of Rambilaben Chinubhai Parmar and Ors. V. National Insurance Co. and Ors.⁴

10. On consideration of the material on record, and the ratio laid down in the aforestated decisions, the compensation awarded by the Tribunal is enhanced from Rs.4,25,000/- to Rs.8,57,520/- with proportionate costs interest at 7.5% per annum from the date of petition till realization.

11. In the result, the appeal is allowed. The appellants shall pay the Court fee for the compensation awarded over and above the compensation claimed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

23rd June, 2017

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⁴ MANU/SC/0356/2014

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