THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.1135 of 2010

JUDGMENT:-

This appeal is filed by the Insurance Company – 2nd respondent in M.V.O.P.No.664 of 2006, against the award dated 24.09.2009 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-Judge, Family Court-cum-Addl.District Judge, Khammam (for short 'the Tribunal').

The respondent/claimants filed the claim petition claiming a compensation of Rs.4,00,000/- on account of death of Nandamuri Satyanarana, who died in a motor accident that occurred on 10.12.2004. The claimants are the wife, son daughter and parents of the deceased.

The brief case of the claimants is that on 10.12.2004 the deceased boarded the auto bearing registration No.AP-20-V-5011 at his village Mustibanda to go to Sathupally and when the auto reached the outskirts of Sathupally, near Anjaneyaswamy temple, the driver of the auto drove the vehicle in a rash and negligent manner and dashed against a lorry bearing registration No.AP-16-T-4563 which was coming in opposite direction, due to which, the deceased and other inmates of the auto sustained injuries and the deceased succumbed to injuries. The deceased was aged about 40 years, he was hale and healthy by the time of accident, he was an agriculturist and doing a private job and earning Rs.2,000/- per month.

The appellant/Insurance Company filed the counter denying its liability. It is further contended that the offending auto has no permit to ply on the road and it was not insured, that the accident occurred due to negligent driving of the driver of the lorry and hence, the Insurance Company is not liable to pay compensation.

On behalf of the claimants, PWs.1 to 3 were examined and got marked Exs.A.1 to A.5. On behalf of the Insurance Company, RWs.1 and 2 were examined and Exs.B.1 and B.2 were marked.

The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.3,45,104/- as against the claim of Rs.4,00,000/-. Questioning the said award, the appellant-Insurance Company filed this appeal.

Learned Counsel appearing for the appellant-Insurance Company submits that the Tribunal erred in fastening the liability on the Insurance Company since the driver did not possess valid driving licence, that the Tribunal also erred in taking into consideration the income by way of salary and also agricultural income and granted compensation which cannot be sustained. Learned Counsel submits that the compensation awarded is excessive and exorbitant and hence the appeal.

Learned Counsel appearing for the respondents/claimants submits that the deceased was a hale and healthy person, aged about 40 years and was maintaining a family consisting of wife, teenaged children and aged parents. He was working in construction firm and was also having Ac.6.00 of land and was earning substantial amount of about Rs.70,000/- per annum. The Tribunal has taken into consideration all the aspects in proper perspective and directed the Insurance Company to firstly deposit the compensation and get it recovered from the first respondent in view of the violation of the driving licence. It is further submitted that the driver was having a valid driving licence but it was only for non-transport whereas he was driving a transport vehicle, for this technical lapse, the Tribunal has rightly directed the Insurance Company to pay and recover.

Having perused the oral and documentary evidence on record and hearing the submissions of both sides, I do not see any substance in the submission of the learned Counsel appearing for the appellant-Insurance Company that fastening of the liability on the Insurance Company is, in any way, erroneous. The fact that it is established is that the deceased was aged about 40 years and while travelling in an auto due to rash and negligent driving of the driver of the auto, it turned turtle and the deceased sustained multiple injuries, which resulted in his death. The police also investigated the crime and *prima facie* found the driver of the auto to be responsible for the accident. Therefore, there is no dispute insofar as the contention of the respondents that the accident was due to rashness and negligence on the part of the driver of the auto is concerned.

The main stay of the case of the appellant-Insurance Company is that the Tribunal erred in taking into consideration the monthly income of Rs.2,000/- by way of employment and another Rs.9,000/- per annum from agricultural income. On this aspect also, I see no infirmity in the award passed by the Tribunal. The claimants in addition to examining the wife as PW.1, has also examined PW.3, who was the owner of Sainath Constructions. It is in his evidence that the deceased was working in the said Construction Company as Supervisor and was being paid a salary of Rs.2,000/- per month and Ex.A.5 is the certificate issued by him. PW.3 was elaborately cross-examined but nothing concrete was elicited from him for disbelieving his evidence that the deceased was gainfully employed with him till his death and was being paid a salary of Rs.2,000/- per month. The Tribunal has therefore taken into consideration and after deducing 1/3rd towards his personal expenses determined the monthly contribution to the family at Rs.1,334/-. By applying the proper multiplier of '13', the total loss of dependency has worked as Rs.2,08,104/-. In addition to this, the Tribunal awarded Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of estate, love and affection.

In addition to the above, as satisfactory evidence has been produced that the deceased was having nearly Acs.6.,00 of wet and dry lands and was getting the same cultivated, the Tribunal has taken into consideration the annual income from the agricultural lands at Rs.9,000/- and applied the multiplier of '13' and determined the compensation at Rs.1,07,000/-. The approach of the Tribunal is just and reasonable. For a person aged about more than 40 years who was maintaining two grown up children in addition to the wife and parents, the monthly income to the family in the year 2004 in the range of Rs.2,000/- per month cannot at all be said to be, in any way, excessive or erroneous. Oral and documentary evidence, which established the above aspects, has been produced by the claimants.

Upon reappraisal of the oral and documentary evidence on record, I see no reason to hold that the amount awarded by the Tribunal at Rs.3,45,104/- is in any way excessive, exorbitant or unreasonable. For the lapse of the driver of the auto in not producing the licence to drive a transport vehicle though he was possessing a valid driving licence to drive a non-transport vehicle, the Tribunal has rightly directed the Insurance Company to firstly satisfy the award, giving liberty to the Insurance Company to recover the said amount from the first respondent in accordance with law.

In view of the above discussion, I see no merits in the appeal and the same is liable to be dismissed.

In the result, the appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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M.S.K.Jaiswal, J

Date: 15th June, 2017

Dsr/ smr