HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 3410 OF 2005

JUDGMENT:

This Motor Accident Civil Miscellaneous Appeal is arising out of the Common Award, dated 04.08.2005, passed in Motor Vehicle Original Petition Nos.1146 and 1270 of 2004 on the file of the Chairman, Motor Accident Claims Tribunal – cum – District Judge, Visakhapatnam (for short, 'the Tribunal').

2. The appellants herein have initially filed Original Petition No.1270 of 2004 claiming a compensation of Rs.4,50,000/- on account of death of one Kottana Mutyala Naidu in a motor vehicle accident that occurred at Khaja village, Guntur District, on 18.07.2004. The claim was against the owner of the lorry bearing registration No. AP-37-T-5373 (respondent No.1) and the insurer of the lorry, the New India Assurance Company Limited (respondent No.2).

The Tribunal, on consideration of the evidence on record, has awarded a compensation of Rs.2,52,744/- as against the claim of Rs.4,50,000/-. The appellants, being aggrieved of the quantum of compensation, preferred this appeal seeking enhancement of compensation.

Heard the arguments of Sri N. Bhavani Shankar, the learned counsel for the appellants and Sri T.Ramulu, the learned counsel for the respondent No.2.

The learned counsel for the appellants submits that the Tribunal has taken into consideration the income of the deceased at Rs.1,200/- per month which is very meager and deducted 1/3rd towards personal expenditure. The Tribunal has not considered the size of the family while deducting the personal expenditure of the deceased.

The learned counsel for the second respondent submits that the Tribunal has properly appreciated the evidence on record and awarded just and reasonable compensation and it does not require any interference.

The point that arises for consideration in this appeal is whether the Tribunal has awarded just compensation in this case considering the correct income of the deceased?

This is a case of death of one Kottana Mutyalanaidu in a motor vehicle accident. The appellants are the wife, minor son and parents of the deceased. The Tribunal has taken the contribution of the deceased to his family as Rs.1,200/- per month and Rs.14,400/- per annum and applied multiplier of 16.51 and also awarded Rs.15,000/- towards loss of consortium to the first appellant.

The Tribunal has not considered the evidence of P.W.1, the wife of the deceased, properly. P.W.1 stated that the deceased was earning Rs.4,000/- per month apart from the daily batta of Rs.30/-. The deceased was a driver by profession. The Tribunal has erred in taking his contribution to the family as Rs.1,200/- per month when there is evidence on record to show that he was earning more than that. On consideration of the evidence available on record, and the ratio laid down by the Apex Court in Ramesh Singh Vs. Satbir Singh[1], New India Assurance Company Ltd. Vs. Smt. Shanti Pathak[2], Oriental Insurance Co. Ltd. Vs. Syed Ibrahim[3], New India Assurance Co. Ltd., Vs. Kalpana (Smt)[4], a decision of High Court of Karnataka at Bangalore in Sri Appayachari Vs. K.Vadivel and the New India Assurance Company Ltd., rep. by its Manager[5] and a decision of High Court of Calcutta in United India Insurance Co. Ltd. v. Shri Buro Mahara[6], the income of the deceased can be taken into consideration as Rs.3,000/- per month. Thus, the annual income of the deceased is assessed at Rs.36,000/- per annum (Rs.3,000/- X 12). The Tribunal deducted 1/3rd towards personal income of the deceased. Considering the size of the family of the deceased, this Court deems it appropriate to deduct 1/4th towards the personal expenditure of the deceased instead of 1/3rd. Thus, the loss of earnings of the deceased would come to Rs.27,000/- per annum (Rs.36,000/- X ¼). The age of the deceased by the date of accident is 30 years. As per the decision of the Apex Court in Sarla Verma Vs. Delhi Transport Corporation[7], the appropriate multiplier applicable to the age of the deceased is 17. Thus, the total loss of earnings of the deceased comes to Rs.4,59,000/- (Rs.27,000/- X 17). The Tribunal has awarded consortium of Rs.15,000/- to the first appellant (wife) which do not require any interference. Thus, the

[1] MANU/SC/7089/2008
[2] MANU/SC/7776/2007
[3] MANU/SC/7915/2007
[4] (2007) 3 SCC 538
[5] MANU/KA/3721/2013
[6] MANU/WB/0139/2015
[7] (2009) 6 SCC 121

appellants are entitled for a total compensation of Rs.4,74,000/- (Rs.4,59,000/- + Rs.15,000/-).

In the result, the Motor Vehicle Civil Miscellaneous Appeal is allowed modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.2,52,744/- to Rs.4,74,000/- with proportionate costs and subsequent interest at the rate of 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the amount within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellants 1, 3 and 4 (wife and parents respectively) are permitted to withdraw the amount in proportionate with the shares fixed by the Tribunal. Since appellant No.2 is a minor, his share of compensation shall be kept in a Fixed Deposit until he attains the age of majority. The appellants are directed to pay the deficit Court fee for the amount awarded over and above the original claim within a period of two (02) months from the date of this order. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed as infructuous.

G. SHYAM PRASAD, J

31st January, 2017.
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