

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1139 OF 2007

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'), by the appellants-petitioners in M.V.O.P.No.259 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Srikakulam (for brevity, 'the Tribunal').

Heard both the learned counsel for the appellants and the learned counsel for respondent No.3-insurer, apart from perusing the material available on record. The claim against the second respondent is dismissed for default. However, dismissal of the appeal for default against respondent No.2-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **MEKA CHAKRA RAO V. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS**¹, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle

¹ 2001(1) ALT 495 (D.B.)

to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

Learned counsel for the appellants would submit that the appellants are wife and children of the deceased-K.Govinda Rao, who died in a motor accident in the year 1999 due to the rash and negligent driving of the driver of the lorry bearing No.AP36/T 1539, owned by the second respondent, driven by the first respondent and insured with the third respondent. He further submits that the deceased was 40 years old, doing kirana business and earning Rs.6000/-per month, however, the Tribunal has taken the monthly income of the deceased at Rs.1500/- and granted Rs.1,80,000/- towards loss of dependency caused to the petitioners; Rs.2500/- towards loss of estate; Rs.2000/- towards transportation and funeral expenses; and, in all, granted compensation of Rs.1,84,500/- which is quite unjust and unreasonable and that the deceased was owning a scooter at the time of the accident; the Tribunal held that there is no certificate to show that the deceased was a kirana merchant. He would further submit that for a business of that nature no certificate would be issued by any authority and that the Tribunal ought to have considered the same and awarded compensation of Rs.10,00,000/- and, ultimately, prayed to enhance the compensation as prayed for.

On the other hand the learned counsel for the third respondent-insurance company contended that the Tribunal had taken the monthly income of the deceased at Rs.1500/- basing on the oral and documentary evidence placed before it; analysed the entire evidence and, accordingly, awarded compensation of Rs.1,84,500/-. He would further contend that there is no merit in the appeal and all the contentions raised on behalf of the appellants are liable to be rejected and, ultimately, prayed to dismiss the appeal.

In view of the contentions put forth by both the sides, the point for determination is whether the appellants are entitled for enhancement of compensation?.

P.Ws.1 and 2 were examined and Exs.A1 and 2 were marked on behalf of the appellants in the Tribunal. Ex.A1 is the C.C. of the F.I.R. and Ex.A2 is the M.V.I. report. The evidence of P.W.2 also reveals that there was rash and negligent driving on the part of the driver of the vehicle bearing No. AP36/T 1539. Though P.Ws.1 and 2 were subjected to lengthy cross-examination nothing was elicited to discard their testimony. The evidence of P.Ws.1 and 2 and the documents marked as Exs.A1 and 2 reveal that the deceased-K.Govinda Rao died due to the rash and negligent driving of the driver of the lorry bearing No. AP36/T 1539. After analysing the entire evidence, the Tribunal had held the same. The finding is based on record and there is nothing to vary the same. It is also not in dispute that the crime lorry bearing No. AP36/T 1539 is not

insured with the third respondent and the driver and owner have violated the terms and conditions of the policy of the insurance. The Tribunal, while passing the award, has also held that the respondent Nos.1 to 3, being the driver, owner and insurer of the crime vehicle respectively, are jointly and severally liable to pay the compensation awarded. This finding is also based on record. There is nothing to vary the same.

The evidence of P.Ws.1 and 2 reveals that the claimants are the wife and children of the deceased-K.Govinda Rao and were depending on the deceased. The specific evidence of P.Ws.1 and 2 discloses that the deceased was a kirana merchant and earning Rs.6000/- per month. The material placed on record reveals that when the deceased along with his brother-in-law were travelling on a scooter for their business collection he met with an accident and died. Therefore it cannot be said that the deceased was not a businessman and no certificate is required to prove his business. In these circumstances, it may be safely concluded that the deceased was a kirana merchant and the accident occurred in the year 1999. As there is no evidence regarding the monthly income of the deceased his monthly income can be taken at Rs.2500/- instead of Rs.1500/- and, therefore, his annual income comes to Rs.30,000/- (Rs.2500/- X 12). After deducting 1/3rd of it towards his personal expenses it comes to Rs.20,000/-. The suitable multiplier for the age of '40' years is '15' and after applying the same the loss of dependency comes to Rs.3,00,000/-(Rs.20,000/- X 15) and, accordingly, the same is granted to the petitioners. The petitioners

are also entitled to a sum of Rs.50,000/- towards loss of love and affection and loss of estate instead of Rs.2500/- towards loss of estate awarded by the Tribunal. The petitioners are also entitled for a compensation of Rs.25000/- towards funeral expenses and transportation charges, instead of Rs.2000/- awarded by the Tribunal, and a sum of Rs.25,000/- is granted to the first petitioner towards loss of consortium. In all the petitioners are entitled for a sum of Rs.4,00,000/-.

Accordingly, this appeal is allowed in part modifying the order dated 29.09.2006 passed by the Tribunal, enhancing the compensation from Rs.1,84,500/- to Rs.4,00,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The amount of enhanced compensation shall be apportioned between the appellants-petitioners equally and, on deposit, they are permitted to withdraw their amounts with interest.

Miscellaneous Petitions pending, if any, shall stand closed.
No order as to costs.

26th July, 2017
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Dr.SHAMEEM AKTHER, J