HON'BLE Dr.JUSTICE SHAMEEM AKTHER

MACMA No.756 of 2007

JUDGMENT:

Heard learned counsel for the appellant/claimant and the Standing counsel for 2nd respondent. The claim against respondent No.1 – owner of the vehicle has been dismissed for default vide order dated 08.07.2016. The dismissal of claim against owner of the vehicle is not a bar to adjudicate this appeal on merits in view of the decision in **Meka Chakra Rao v. Yelubandi Rama Rao**[1]. Hence, this appeal is being disposed of on merits.

2. Learned counsel for the appellants would submit that Tribunal has granted an amount of Rs.1,85,500/- for the death for the deceased who is 18 years of age on the date of occurrence of accident. The Tribunal taken Rs.2,500/- per month as income of the deceased and adopted the multiplier '8' taking into consideration the average age of the appellants and granted Rs.1,60,000/- towards loss of dependency, but has not granted any amount towards loss of love and affection and ultimately prayed to enhance the compensation as prayed for.

3. Learned counsel for the respondent-insurance company contends that Tribunal has taken the income of the deceased as Rs.2,500/- and rightly applied multiplier '8', as the age of the mother of the deceased is 50 years as per the inquest panchanama placed before this Court. The Tribunal awarded the compensation basing on the evidence on record which is just and reasonable and prayed for dismissal of the appeal.

[1] **2001 (1) ALD 453**

4. In view of the contentions put forth, the point for determination is whether the appellants are entitled for enhancement of the compensation.

5. It is evident from the evidence on record that as per Ex.A2 and A3 copies of inquest panchanama and PME report, the age of the deceased is 18 years and the age of the parents of the deceased are 60 and 50 years respectively. Though learned counsel for the appellants contends that the age of the mother is 45 years, it is contrary to Ex.A2 inquest panchanama. The Tribunal has taken the average age of the parents of the deceased as 55 years, which is erroneous. In the circumstances, the age of the mother of the deceased can be taken as 50 years. In view of the decision of the Hon'ble Supreme Court in **Sarla Verma and Ors. v. Delhi Transport Co., and another**[2], the suitable multiplier for the age 50 is "13". The Tribunal noted that the deceased was a driver and arrived at his monthly earnings at Rs.2,500/- per month, which comes to Rs.30,000/- per annum. Since deceased is a bachelor, 1/2 of the income is to be deducted towards personal expenses of the deceased. Thus the amount of loss of earnings comes to at Rs.1,95,000/-. The Tribunal has granted Rs.2,000/- towards funeral expenses, which is meager and the same is required to be enhanced to Rs.20,000/-. The Tribunal on other counts has rightly granted Rs.1,500/- towards transport charges, Rs.20,000/- towards medical expenses and Rs.2,000/- towards attendant charges. Further, the Tribunal has not granted any amounts towards love and affection. Since appellants lost their son in the accident, they are entitled for an amount of Rs.20,000/- towards loss of love and affection. Therefore, in all, the appellants herein are entitled for compensation of Rs.2,58,500/- with interest at 7.5% per annum. As seen

[2] **(2009) 6 SCC 121**

from the oral and documentary evidence on record, there is rash and negligence on the part of the driver of the crime vehicle bearing No. AP 7 X 3659 and therefore the finding of the Tribunal cannot be disturbed with regard to causing death of B.Prasad by rash and negligent act. As far as the insurance policy is concerned, the same was valid on the date of the accident and there is no violation of the terms and conditions of the policy. Therefore, the Tribunal has rightly tagged liability against the owner and the insurer of the vehicle.

6. In the result, the appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.1,85,500/- to Rs.2,58,500/- (Rupees Two lakhs Fifty Eight thousand Five hundred only) with interest at 7.5% per annum from the date of the claim petition till the date of deposit and costs. The appellants are entitled to withdraw the enhanced compensation equally. Other directions of the Tribunal are retained.

7. Miscellaneous applications, if any, pending in this appeal shall stand closed.

Dr.SHAMEEM AKTHER, J

June 27, 2017
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