

HON'BLE Dr.JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2458 of 2005

JUDGMENT:

This appeal is filed aggrieved by the Award of compensation of Rs.1,37,000/-, against the claim of Rs.4,00,000/- made by the appellants, vide order dated 01.07.2005 in O.P.No.2377 of 2003 on the file of VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad.

Learned counsel for the appellants had submitted arguments on 05.10.2017. There is no representation on behalf of respondent No.2/Insurer and it is posted today. Today also, there is no representation on behalf of respondent No.2

The 1st respondent is the owner of Maxi Cab Jeep bearing No.AP-22U-3216. Though notice is served on respondent No.1 none entered appearance. Since, non-appearance of respondent No.1 is not fatal, this appeal can be decided on merits.

Learned counsel for the appellant would submit that deceased was 45 years old and working as wood cutter and earning Rs.3,000/- per month. He contended that appellants are the wife and son of deceased Balaiah and the Tribunal had erroneously taken the annual income of the deceased as Rs.15,000/- per annum and calculated compensation payable to the appellants towards loss of earning. The Tribunal had granted Rs.15,000/- in favour of respondent No.1 towards consortium and Rs.10,000/- towards loss of estate. In all it had granted Rs.1,37,000/- which is meager and ultimately prayed to enhance the claim to Rs.4,00,000/- as prayed for. It is also contended that there is rash and negligent driving of Jeep and there is ample evidence to prove

the same. The Tribunal also held that the said Jeep was insured with respondent No.2 and insurance policy was valid on the date of accident.

To substantiate the claim, P.W1 and P.W2 were examined got marked Ex. A1-CC of FIR, Ex.A2-CC of Charge Sheet, Ex.A3-CC of Inquest report, Ex.A4- CC of post mortem report, Ex.A5, CC of MVI report and Ex.A6- CC of Insurance policy. No witnesses were examine on behalf of respondent. The Tribunal had stated number of reasons and also held that the said Jeep was validly insured with respondent No.2 which is evident from Ex.A6- copy of insurance policy. These findings are based on record and there is nothing to take a different view.

The point for determination is whether the appellants are entitled for enhancement of compensation as prayed for?

P.W1 is wife of the deceased, who clearly and categorically deposed that her husband is of 45 years and was working as a wood cutter. She reiterated the same in the cross examination but she did not depose about the earning of the deceased. P.W2 deposed about the rashness and negligence on the part of the Jeep bearing No.AP-22U-3216 and also the death of the deceased by use of the said Jeep. P.W2 did not depose anything about the occupation and earning of the deceased. As per Ex.A3-CC of Inquest Report and Ex.A4-Post Mortem Report the age of the deceased is shown as 50 years. The Tribunal had analyzed the entire evidence and believed that the deceased was 50 years and working as a wood cutter and took his age as 50 years and applied

11 as multiplier, but the annual income of the deceased was taken as Rs.15,000/- per annum. As per the evidence on record, the accident occurred on 26.06.2003 at 6.00p.m and deceased Balaiah died on the spot. Therefore, it is proper to take earning capacity of a person of the year 2003. So, it can be safely concluded that the deceased was earning Rs.25,000/- per annum and after deducting 1/3rd for his personal expenses, which comes to Rs.16,667 and multiplier 11 applied, loss of dependency caused to the appellants comes to Rs.1,83,337/-(16,667x11) which is rounded to Rs.1,83,000/-. The petitioners are entitled for Rs.1,83,000/- towards loss of dependency. The grant of compensation of Rs.15,000/- towards loss of consortium and Rs.10,000/- towards loss of estate is also meager. Therefore, appellant No.1 is entitled for Rs.50,000/- towards loss of consortium and Rs.20,000/- towards loss of estate, funeral and other expenses. In all, the appellants are entitled for compensation of Rs.2,53,000/- with interest at 7.5% per annum. The interest is reduced from 9% to 7.5% relying on decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

In the result, the appeal is allowed in part. The compensation of Rs.1,37,000/- is enhanced to Rs.2,53,000/- with 7.5% interest from the date of filing of O.P to the date of realization. On deposit, both the appellants are entitled to share the enhanced compensation equally. Since the O.P relates to the

¹ 2013 ACJ 1403

year 2003, both the appellants are permitted to withdraw the entire compensation.

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

Dr.SHAMEEM AKTHER, J

October 11, 2017
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