

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1463 OF 2010

JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 01.05.2010 passed by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge, Kamareddy, Nizamabad District, in O.P. No.1102 of 2007 dismissing the claim petition.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.2,50,000/- on account of the death of the deceased Mettu Srikanth in a motor vehicle accident.

3. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

4. The brief averments made in the petition are as follows:

On 08.03.2007 while the deceased Master Mettu Srikanth was coming on his cycle and when he reached near Cheruvu Tankbandu, Kachapur village at about 4.00 p.m., driver of tractor-trailor bearing registration No.AP-24/T-8423 and AP-24/T-8424, came in a rash and negligent manner and dashed against the cycle as a result of which he deceased fell down, received grievous injuries and died instantaneously. The police, Bhiknoor, registered a case against driver of the

tractor-trailor. It is stated that during lifetime of the deceased, he used to attend agricultural work and was earning Rs.3,000/- per month and was contributing entire income to his family. In view of sudden death of the deceased, apart from loss of earnings, the petitioner lost love and affection of her brother and, therefore, she claimed compensation of Rs.2,50,000/-.

The first respondent - owner of tractor-trailor remained exparte. The second respondent insurance company filed counter putting the petitioners to prove manner of the accident, age and income of the deceased and stated that the respondent is not liable to pay any compensation and prayed the court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed four issues and to substantiate the claim, on behalf of the petitioners, PWs 1 and 2 were examined and Exs. A-1 to A-6 were marked. No oral evidence was adduced on behalf of the respondents but Ex.B-1 insurance policy was marked.

8. The Tribunal, after considering oral and documentary evidence though held that the accident occurred due to rash and negligent driving of the driver of tractor-trailor bearing registration No.AP-24/T-8423 and AP-24/T-8424, dismissed the claim petition on the ground that the first petitioner being married sister of the deceased, is not entitled to claim compensation for the death of her brother.

9. Aggrieved by the dismissal of the claim petition, the petitioners preferred the present appeal.

10. Learned counsel for the petitioners argued that the first petitioner, who was also minor at the time of filing the claim petition, is no other than sister of the deceased, and due to the sudden death of her brother, she has lost love and affection of her brother apart from his earnings. Reliance is sought to be placed on a judgment of Apex Court in *R.K.Malik and another Vs. Kiran Pal and others*¹ to contend that the petitioners are entitled to compensation for the death of the deceased – a minor boy.

On the other hand, learned counsel for the Insurance Company contended that for the loss of dependency, taking notional income of deceased at Rs.15,000/- per annum and after deducting 1/3rd towards personal expenses of the deceased, contribution to the family can be assessed at Rs.10,000/- and proper multiplier applicable is '15' and, thus, if any compensation is payable, it should be only Rs.1,50,000/- and not more than the same. He finally argued that the claimant being married sister of the deceased, is not entitled to any compensation and prayed to dismiss the appeal.

¹ (2009) 14 SCC 1

Now the point that arises for consideration is whether the award passed by the Tribunal is liable to be set aside and whether the petitioner is entitled to any compensation.

A perusal of the evidence clinchingly shows that the accident occurred due to rash and negligent driving of the driver of tractor-trailor bearing Registration No. AP-24/T-8423 and AP-24/T-8424 belonging to the first respondent herein. The said finding needs no interference by this Court inasmuch as no respondent has challenged this finding.

14. Coming to the quantum of compensation to be awarded to the claimant, it is no doubt true that at the time of filing of claim petition, the first petitioner, who is sister of the deceased, was also a minor. The parents of the deceased and the first petitioner have died prior to the date of accident. It is also true that the Tribunal has rightly held that the petitioner is not entitled for any compensation towards dependency but due to sudden death of the deceased, she is deprived of the loss and love and affection towards his brother. Therefore, considering the settled principle of law as laid down in *R.K.Malik's* case, referred to above, the income of the deceased can be taken at Rs.15,000/- per annum and after deducting 1/3rd therefrom, his contribution can be assessed at Rs.10,000/- per annum and applying the multiplier of 15, the compensation can be determined at Rs.1,50,000/-

towards loss of love and affection due to death of the deceased.

Therefore, in view of the above discussion, the appeal is partly allowed granting compensation of Rs.1,50,000/- along with interest @ 7.5% per annum from this date till the date of realisation. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

02.08.2017
MAS



(ANIS, J)

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No. 1463 OF 2010

Dated: 02.08.2017

MAS