

THE HONOURABLE SMT. JUSTICE T. RAJANI

M.A.C.M.A. No.321 of 2008

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the appellants/petitioners assailing the Award and Decree dated 20.09.2007 in O.P.No.1274 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge, Hyderabad (for brevity "the Tribunal"), on the grounds that the Tribunal has erred in reducing the income of the deceased, failed to appreciate the documentary evidence, which are brought in Exs.A.2 to A.8, and also failed to award amounts towards loss of estate, consortium and funeral expenses.

At the hearing, learned counsel for the appellants submits that the Tribunal awarded an amount of Rs.5,000/- per month only towards income of the deceased, and therefrom deducted an amount of Rs.1,000/- towards maintenance expenses, which is totally erroneous.

The learned counsel for the second respondent/insurer contends that an amount of Rs.5,000/- was stated to be the income of the deceased, which includes the maintenance expenses and the Tribunal took the net earnings as Rs.4,000/- by deducting maintenance expenses.

The said argument persuades this court as it is on correct lines. Hence, the income of the deceased remains to be Rs.4,000/- per month. After deduction of 1/3rd therefrom, the monthly loss of earnings of the deceased remains to be an amount of Rs.2,667/- and annual loss of earnings of the deceased remains to be an amount of Rs.32,004/-.

The learned counsel for the appellants also contends that the Tribunal adopted multiplier '5' as against multiplier '7' which ought to have been adopted in respect of the age of the deceased. He also contends that the Tribunal considered the age of the deceased as 60 to 65 years as per the Post Mortem Examination Report. The learned

counsel for the second respondent contends that in Exs.A.1 and A.2 - F.I.R. and charge sheet, the age of the deceased was shown as 70 years, but he conceded with the opinion of this court that the age mentioned in the Post Mortem Report would be on a better standard. In **Sarla Verma (Smt.) & Others v. Delhi Transport Corporation & Another**¹ the Apex Court held that multiplier '7' should be applied for the age group of 61-65 years. Hence, the appellants are entitled to an amount of Rs.2,24,028/-(32,004 x 7) towards loss of future income of the deceased.

The learned counsel for the petitioners relied on the Judgment of the Apex Court in **Rajesh v. Rajbir Singh**² in support of their claim, wherein it was held that atleast an amount of Rs.1,00,000/- should be awarded towards loss of consortium. It was also observed that the compensation under conventional heads like loss of consortium and funeral expenses, which were fixed several decades ago also need to be increased. It was further held that an amount of Rs.25,000/- has to be awarded towards funeral expenses.

In view of the Judgment of the Apex Court in **Rajesh v. Rajbir Singh** (2supra), the first appellant would be entitled for an amount of Rs.1,00,000/- towards loss of consortium, and an amount of Rs.25,000/- towards funeral expenses. The Tribunal already awarded an amount of Rs.2,500/- towards loss of estate of the deceased, which requires no interference. In total, the appellants are entitled for an amount of Rs.3,51,528/-.

In **Rajesh v. Rajbir Singh** (2supra), at paragraph 14, the Apex Court also held that the compensation in excess, to what is claimed in the claim petition, can be awarded by the Tribunal. But, the only requirement is, it should be a just compensation. Hence, in view of the above, this court does not feel any embargo in awarding the above

¹ (2009) 6 SCC 121

² 2013 ACJ 1403

mentioned amount which is beyond the claim of Rs.3,00,000/-. The Award shall relate back to the date of the decree and the enhanced amount would carry interest at the rate specified and from the time as indicated by the Tribunal. In all other aspects, the order of the Tribunal shall remain unaltered.

Accordingly, the appeal is allowed enhancing the compensation amount from Rs.1,74,000/- to Rs.3,51,528/- (Rupees Three Lakhs, Fifty One Thousand, Five Hundred and Twenty Eight Only). Proportionate costs are ordered. The appellants shall pay court fee on the enhanced amount awarded by this Court.

As a sequel, miscellaneous petitions, if any, stand closed.

Date:06-03-2017
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JUSTICE SMT.T.RAJANI