

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.469 of 2014

JUDGMENT:

This appeal is arising out of the award and decree dated 06.07.2012 in M.V.O.P. No.213 of 2011 on the file of the Motor Accidents Claims Tribunal—cum—III Additional District Judge, Kurnool at Nandyal.

2. The brief facts of the case are as follows:

a) On 18.04.2011 at about 7.30 am, while the deceased—Gadekari Sreenivasulu and his brother-in-law—Alamuru Nagaeswara Venkata Ramana Reddy were going towards Bommalasatram, near Koilakuntla junction, on NH-18 road, Nandyal town on foot, at that time, the driver of the lorry bearing No.TN 28-AE-1589, which came from Allagadda side, driven in a rash and negligent manner without blowing horn, hit against Gadekari Sreenivasulu (deceased) from behind and caused multiple injuries, and immediately he was shifted to the Government Hospital, Nandyal for treatment and from there, he was referred to the Government General Hospital, Kurnool, for better treatment and while he was being shifted in Ambulance, near Panyam he died due to the said injuries.

b) The deceased studied 10th class and he was working as auto driver, for auto bearing No.AP 21 W 6429, and getting the income of Rs.12,000/- per month, and the respondent No.2/ claimant No.2 is studying Intermediate second year, in Rao's Junior College, Nandyal and the respondent No.3/ claimant No.3 is studying 8th class and due to the sudden demise of the

deceased, the respondents/ claimants lost their earning male member and are leading miserable life and hence the respondents herein have filed the claim petition claiming compensation of Rs.6,00,000/-.

c) The 5th respondent, the owner of the lorry bearing No.TN 28-AE 1589 remained *ex parte* before the Tribunal.

d) The appellant—Insurance Company filed counter denying the averments in the claim petition, stating that the driver of the lorry bearing No.TN 28 AE 1589 had not driven the lorry in a rash and negligent manner, and he was not having valid and effective driving licence at the time of the accident, therefore the appellant is not liable to pay any compensation to the respondents/ claimants; prayed for dismissal of the petition.

e) The Tribunal, on considering the evidence of PWs.1 and 2, Exs.A1 to A7 and Ex.B1, has partly allowed the claim petition awarding compensation of Rs.5,99,600/- with interest at 6% per annum fixing joint liability against respondents 1 and 2.

3. Aggrieved by the said award, this Appeal is preferred by the Insurance Company to reduce to compensation.

4. The point for consideration is:

“Whether the assessment of income of the deceased made by the Tribunal is based on the proper evidence produced before it?”

5. Heard arguments of learned Standing Counsel for the appellant and learned counsel for the respondents.

6. Learned Standing Counsel for appellant submitted that the award passed by the Tribunal is highly excessive; Tribunal has erred in taking the monthly income at Rs.4,600/- per month without there being any proper reliable evidence with regard to proof of income of the deceased; that the Tribunal has applied wrong multiplier of 14, which is actually on higher side in respect of the age of the deceased; on these grounds, prayed to reduce the compensation awarded by the Tribunal.

7. Sri N.Krishna Murthy, learned counsel for respondents/ claimants submitted that the Tribunal has not taken the correct income of the deceased though the deceased was driver by profession; used to take the school children in an auto; earning Rs.15,000/- per month; hiring an auto by paying Rs.3,000/- per month. It is submitted that the Tribunal has erred in taking the income of the deceased at Rs.4,600/- per month whereas his income was Rs.12,000/- per month. In support of his contention learned counsel for respondents placed reliance on the decision of the Supreme Court in **Jitendra Khimshankar Trivedi & others vs Kasam Daud Kumbhar & others**¹ and also another decision of this Court in **New India Assurance Company Limited, rep. by its Divisional Manager, Kurnool vs Neeli Venakta Lakshamma & others**, wherein it was held that even in a case where the appellant was insurer, the Court has to grant just and reasonable compensation basing on the evidence produced by the parties. Learned counsel further submits that the respondents/ claimants are entitled for enhancement of compensation in view of the income of the deceased i.e., Rs.12,000/-.

¹ CA No.1415 of 2015

8. Learned counsel for respondents submits that basing on the testimony of PWs.1 and 2 and Ex.A6, the Tribunal ought to have come to the conclusion that the deceased was a driver by profession and was earning Rs.12,000/- per month.

9. Though, PWs.1 and 2 deposed in their evidence that the deceased was earning Rs.12,000/- per month by running an auto, there was no documentary evidence produced before the tribunal to prove the income. However, the Tribunal has properly appreciated the evidence, and arrived at a proper conclusion that the notional income of the deceased was Rs.4,600/- per month considering him as a driver by profession. Therefore, the finding of the Tribunal does not require any interference in this appeal, as the award passed by the Tribunal is just and reasonable.

10. Accordingly, the appeal is dismissed confirming the award passed by the Tribunal. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

08.11.2017.
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