

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1189 OF 2007

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'), by the appellants-petitioners in O.P.No.404 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Gooty (for brevity, 'the Tribunal').

Heard both the learned counsel for the appellants and the learned counsel for respondent No.2-insurance company, apart from perusing the material available on record. Claim against the first respondent is dismissed for default.

This appeal is being disposed of in view of the decision reported in **MEKA CHAKRA RAO v. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS**¹, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the

¹ 2001(1) ALT 495 (D.B.)

statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

Learned counsel appearing on behalf of the appellants would contend that the Tribunal has granted an amount of Rs.2,22,000/- for the death of a hamali who was 26 years old on the date of the accident, which is meagre, and that the Tribunal has not granted compensation for the loss of estate and loss of love and affection etc. He would further contend that, though the deceased was earning Rs.4000/- per month as hamali, the Tribunal has taken his monthly income as Rs.1500/- and, ultimately, he prays to enhance the compensation as prayed for.

On the other hand, learned counsel for respondent No.2-insurance company would contend that the Tribunal has analysed the entire evidence on record and rightly took the daily earnings of the deceased at Rs.50/- per day and granted just and adequate compensation to the appellants-petitioners; there are no mitigating circumstances to enhance the compensation; and finally, prayed to dismiss the appeal.

It is evident from the record that the deceased by name-Sk.Akbar Basha died due to the rash and negligent driving of the driver of the crime vehicle bearing No.AP04V 0350. He was travelling by the crime vehicle at the time of the accident. The said crime vehicle was insured with the second respondent under the original of Ex.B1-copy of the policy of insurance. The Tribunal held

that the respondent Nos.1 and 2 are jointly liable to pay the compensation awarded. No appeal is filed by the insurance company against the impugned order.

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

As per the evidence placed on record the deceased was a hamali aged 26 years. The Tribunal has taken his monthly earnings at Rs.1500/-. There is evidence to believe that the claimants were dependants on the deceased. The award of Rs.2,12,000/- towards loss of earnings is quite low. In view of the evidence of P.Ws.1 and 2 the earnings of the deceased can be taken at Rs.2100/-, and after deducting 1/3rd of it towards personal expenses of the deceased it comes to Rs.1400/- and his annual income comes to Rs.16,800/-. The suitable multiplier for the age of 26 is '17'. Therefore the loss of dependency comes to Rs.2,85,600/- (Rs.16,800/- X 17) which is rounded off to Rs.2,86,000/-. The petitioners are entitled for an amount of Rs.2,86,000/- towards loss of dependency. The first petitioner, being the wife of the deceased, is entitled to Rs.25,000/- towards loss of consortium and the petitioner Nos.2 to 5 are entitled for Rs.30,000/- towards loss of love and affection. In all petitioners are entitled to Rs.3,41,000/-.

In the result the appeal is allowed in part modifying the order dated 19.01.2007 passed by the Tribunal, enhancing the compensation from Rs.2,22,000/- to Rs.3,41,000/- with interest at

the rate of 7.5% per annum from the date of petition till realisation.
All the petitioners are entitled to share the enhanced compensation
equally and, on deposit of the same, they are permitted to withdraw
their entire amounts with interest.

Miscellaneous Petitions pending, if any, shall stand closed.
No order as to costs.

Dr.SHAMEEM AKTHER, J

26th July, 2017
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