

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

MACMA.No.2615 of 2005

ORDER:

1. Heard the learned counsel for the appellants and Sri N.S.Bhaskar Rao, learned Standing Counsel for United India Insurance Company Limited.

2. The claimants in O.P.No.421 of 2003, on the file of the Motor Vehicle Accident Claims Tribunal-Cum-III Additional District and Sessions Judge (FTC), Medak are the appellants in the present appeal filed under Section 173 of the Motor Vehicles Act. This appeal is filed, seeking enhancement of the compensation awarded by the Tribunal vide award dated 03.05.2005 in the said MVOP.No.421 of 2003.

3. First claimant is the wife and the claimants 2 to 6 are the children of the deceased Sri Mogulaiah, who lost his life in a motor accident on 13.06.2003. The first respondent/owner of the vehicle remained *ex parte* before the Tribunal and the second respondent insurance company contested the matter by filing counter.

4. On the basis of the pleadings, the Tribunal framed the following point for consideration:

“Whether or not the crime vehicle AET 1917 is involved in the accident and whether or not the driver of the crime vehicle drove the lorry in a rash and negligent driving and at high speed at the material time? If so, what is the just compensation amount that can be awarded to the claimant?”

5. During the course of Trial, claimant No.1/appellant No.1 examined herself as PW.1 and also examined PW.2 eye witness and PW.3 and filed Exs.A.1 to A.7 documents. Nobody was examined on behalf of the respondents, but Ex.B.1 Insurance policy was marked.

6. The Tribunal, towards loss of dependency awarded a sum of Rs.1,44,000/- and Rs.1,000/- towards funeral expenses, Rs.5000/- towards loss of consortium to the first claimant and Rs.5,000/- towards loss of estate. Totally the Tribunal awarded a sum of Rs.1,55,000/- with interest @ 9% per annum from the date of the petition till the date of realisation.

7. The multiplier of 13 adopted by the Tribunal is not disputed by the learned counsel for the appellants.

8. Broadly there are two contentions raised by the learned counsel for the claimants/appellants, viz., 1) The Tribunal grossly erred in fixing the notional income @1500/- per month and ought to have fixed @ Rs.3,000/- per month and 2) The Tribunal grossly erred in awarding paltry sums of money towards other heads also.

In support of his submissions and contentions learned counsel for the appellants placed reliance on the Judgments of the Hon'ble Supreme Court in *LATA WADHWA AND OTHERS v. STATE OF BIHAR AND OTHERS*¹ and the judgment of the Hon'ble Apex Court in *NATIONAL INSURANCE COMPANY LIMITED V. PRANAY SETHI AND OTHERS*².

9. Coming to the first contention advanced by the learned counsel for the appellants, it is to be noted that in the case of *LATA WADHWA AND OTHERS (supra 1)*, the Hon'ble Apex Court held that the minimum earning capacity should be taken as Rs.3,000/- per month. In the instant case, the Tribunal fixed the notional income @ of Rs.1500/- per month. The same is not in accordance with the above mentioned judgment of the Hon'ble Apex Court. Therefore, the monthly income is required to be fixed @ of Rs.3,000/- and if it is fixed so annual income would be Rs.36,000/- and if 1/3rd is

¹ (2001) 8 SCC 197

² SLP (CIVIL) NO.25590 OF 2014
AND BATCH DATED 30.10.2017.

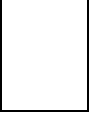
deducted for the personal expenses, the same would come to Rs.24,000/- and if multiplier 13 is applied the amount would come to Rs.3,12,000/-.

10. Coming to the second contention that towards the other heads the Tribunal granted paltry sums of money, it is required to be noted that in the case of *NATIONAL INSURANCE COMPANY LIMITED (supra 2)*, the Hon'ble Apex Court fixed Rs.15,000/- towards loss of estate and Rs.40,000/- towards consortium and Rs.15,000/- towards funeral expenses. Therefore, the claimants are entitled for the said amounts also. In view of the same, the claimants/appellants herein are entitled for Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium to the first claimant and Rs.15,000/- towards funeral expenses.

11. In the result, the appeal is allowed, awarding a sum of Rs.3,82,000/- (rupees three lakhs eighty two thousand only) with interest @ 7.5% per annum from the date of petition till the date of payment. It is made clear that the claimants/appellants shall pay the Court fee on the enhanced amount. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 07.12.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



MACMA.No.2615 of 2005

Dated: 07.12.2017

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