HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.3107 of 2011

JUDGMENT:

The appeal is filed by the claimants, being the wife and father of the deceased, by name Bhanoth Ramdan, aged 35 years, who died on 10.03.2006 in a road traffic accident.

The appellants filed M.V.O.P.No.912 of 2006 on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Warangal (for short "the Tribunal), claiming a compensation of Rs.8,70,000/-, but the Tribunal, upon considering the evidence on record, awarded a sum of Rs.2,05,000/- together with interest @7% p.a. thereon. Being aggrieved, the claimants filed the present appeal.

The facts in brief are that the deceased was working in M/s.Laxmi Balaji H.P.Gas Agency, Zaggergadh, having valid driving licence and was supplying gas cylinders to the consumers. On 10.03.2006 after supplying gas cylinders in Malkapur village, he was returning from Ghanpur station, and when his auto reached Bondugula Vagu, situated at Pallagutta cross roads, i.e., on the road Hanamkonda-Hyderabad National Highway, around 2.30 p.m, the Tipper lorry bearing registration No.AP-36-W-6555, came behind his auto in a rash and negligent manner at high speed and dashed the auto, as a result, the deceased fell down and sustained multiple injuries and died on the spot. The 1st respondent is the owner of the offending lorry and the 2nd respondent is the insurer.

On behalf of the claimants, PWs 1 to 3 were examined and Exs.A1 to A9 were marked. On behalf of the respondents, no oral evidence was adduced, but the insurance policy was marked as Ex.B1.

The Tribunal, after taking into consideration the evidence of PWs 1 to 3 and Exs.A1 to A9 and Ex.B1, determined the compensation, as stated above.

The learned counsel for the appellants submits that admittedly the deceased was a skilled person and he was a driver of an Auto having valid driving licence, and he was gainfully employed with a Gas Agency of PW 2 and was being paid a salary of Rs.4,000/- per month. In addition to that, the deceased was also being paid Rs.100/- per day towards batta. The Tribunal has not taken into consideration the certificate produced by PW 2 under Ex.A6. The Tribunal grossly erred in awarding compensation of Rs.2,05,000/- and it needs to be enhanced.

The learned counsel for the insurance company submits that the Tribunal has rightly taken into consideration the notional income of the deceased in the absence of clinching evidence to show the income of the deceased and by applying proper procedure awarded the compensation, which do not warrant any interference.

The factum of the deceased having died in an accident on 10.03.2006 involving the vehicle owned by the 1st respondent and insured by the 2nd respondent is not disputed. Similarly, the findings with regard to the rashness and negligence on the part of the driver of the offending vehicle are not challenged. That apart, the evidence on record comprising of PWs 1 to 3 and Exs.A1 and A5 *prima facie* show that the accident was due to rash and negligent act of the driver of the crime vehicle. Therefore, the finding of the Tribunal to that effect cannot be disturbed.

With regard to quantum of compensation, the learned counsel for the appellants submits that the Tribunal ought to have awarded compensation of Rs.8,70,000/- as claimed, by taking into consideration the fact that the deceased was a skilled worker, possessing valid licence to drive the Auto and was working in a gas company and the employer gave evidence to that effect that the deceased was being paid Rs.4,000/- per month towards salary and also batta @Rs.100/- per day.

I have perused the evidence of PW 2 and also salary certificate produced by the claimants. It is not disputed that the deceased was a skilled worker being possessed a valid licence and therefore, the evidence of PW 2 coupled with the documents produced can be taken as substantial establishing the fact that the deceased was earning not less than Rs.4,500/- per month i.e., Rs.4,000/- towards salary and another Rs.500/- towards batta. This income ought to have taken by the Tribunal and there are no grounds to disbelieve the evidence of PW 2 and the certificates produced by the claimants. Therefore, the monthly income of the deceased is required to be taken as Rs.4,500/- and on computation, the loss of dependency would work out as under:

Rs.4,500/- x 12 x 16	= 8,64,000/-
(-) 1/3rd towards personal living expenses	= 2,88,000/-
	5,76,000/-

The deceased was aged about 35 years and left behind the young widow and daughter and father. Therefore, the total amount towards conventional heads, such as, loss of consortium, love and affection, funeral expenses and transport charges can rationally be fixed at Rs.50,000/-, and the total compensation that works out to the claimants is Rs.6,26,000/-.

Upon perusing the entire evidence on record and the submissions made on either side, I feel that just and reasonable compensation that can be awarded to the claimants is Rs.6,26,000/-, but not either Rs.2,05,000/- as awarded by the Tribunal or Rs.8,70,000/- as claimed by the claimants. It is noticed that the Tribunal awarded interest @7% p.a. and it should be @7.5% p.a.

In the result, the MACMA is allowed in part, enhancing the compensation from Rs.2,05,000/- to Rs.6,26,000/- to the claimants together with interest at 7.5% per annum from the date of petition till the date of realization. With regard to apportionment, claimants Nos.2 & 3, who are daughter and father of the deceased, are each entitled to 25% of the compensation and the remaining 50% together with proportionate costs should be paid to the 1st claimant, who is the wife of the deceased. The claimants are entitled to withdraw the amount, as per apportionment, as and when deposited, without furnishing any security. The 2nd respondent-insurance company shall deposit the compensation amount together with interest and costs within a period of two months from today. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 23.06.2017
Dsr