

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2236 OF 2005

JUDGMENT:

Heard learned counsel for the appellants as well as learned standing counsel appearing for the respondent-insurance company.

This is an appeal filed by the claimants seeking enhancement of compensation amount awarded to them by the VII-Addl. District Judge (FTC), Nizamabad district at Bodhan in MVOP No. 225 of 2000 under order dated 2.5.2005.

The parties are hereinafter referred to as they are arrayed before the Tribunal.

The facts that led to filing of the MVOP, in brief, are that the petitioners are the sons of the deceased Gorantla Bhulaxmi who died in a motor vehicle accident. On 4.7.1999 while the deceased Gorantla Bhulaxmi and others were traveling in a jeep bearing No. AP-25-B-5252, belonging to the first respondent and insured with the second respondent, from Kamareddy to Bidar to attend a marriage, and when the jeep reached near Bhiknoor village shivar at about 5.00 P.M. the driver drove it in a rash and negligent manner and suddenly applied brakes, due to which, it turned turtle and the deceased sustained serious injuries and succumbed to the said injuries while she was being shifted to hospital. According to the petitioners, the deceased was doing kirana business and was earning Rs.2,000/- per month and contributing the same for maintaining her family. The petitioners who are the sons of the deceased Gorantla Bhulaxmi claimed a total compensation of Rs.1,50,000/-.

First respondent remained exparte and second respondent filed a counter denying all the averments made in the MVOP and put the petitioners to strictly prove the said averments.

The petitioners examined PWs 1 and 2 and marked Exs.A1 to A6 and no evidence, either oral or documentary, was adduced on behalf of the respondents. On the basis of the pleadings and on an analysis of the evidence, the Tribunal found that the accident occurred due to the rash and negligent driving of the jeep by the first respondent and disbelieved the version of the petitioners that the deceased was earning Rs.2,000/- per month by doing kirana business and found there was no loss of dependency to the petitioners. The Tribunal, however, granted Rs.60,500/- on various counts. Aggrieved by the said award of the Tribunal, the claimants have preferred this appeal.

The learned counsel for the claimants/appellants contends that the Tribunal ought to have granted compensation on account of loss of dependency as it was the case of the petitioners that the deceased was earning Rs.2,000/- per month by doing kirana business and contributing the same for maintaining the family and that the compensation awarded by the Tribunal is meagre and by saying so, he requests to enhance the compensation amount.

On the other hand, the learned standing counsel for the second respondent-insurance company contended that the petitioners have not established the income of the deceased and therefore the Tribunal has rightly found that there was no loss of dependency and he further

contended that the rate of interest awarded by the Tribunal may be reduced from 9% P.A. to 7.5% PA.

As far as the occurrence of accident, there is no much contest from the respondents. However, the petitioners produced evidence of P.W.2 who was eye-witness to the accident and co-traveller of the deceased and he spoke about the negligent driving of the jeep by its driver and occurrence of the accident. Ex.A1 is the copy of First Information Report and Ex.A4 is copy of charge sheet filed against the first respondent, which show that the first respondent drove the jeep in a rash and negligent manner and caused the accident and as a result of which, the deceased sustained injuries and died. The evidence of PW 2 and Exs.A1 and A4 establish that the accident occurred due to the rash and negligent driving of the jeep by the first respondent. Further Ex.A6-insurance policy shows that the crime vehicle was insured with the second respondent and it was valid on the date of accident. Therefore, I uphold the findings of the Tribunal on these aspects.

Coming to the compensation amount, I find no evidence supporting the contention of the petitioners that the deceased was earning Rs.2,000/- per month by doing kirana business and contributing the same to the family, therefore the Tribunal has rightly held that there is no loss of income to the petitioners on this account. Apart from grant of Rs.50,000/- under no fault liability, the Tribunal granted Rs.5,000/- towards pain and suffering, Rs.2,000/- for transport charges, Rs.1,000/- for clothes and other articles and Rs.2,500/- towards funeral expenses. Thus the Tribunal granted only Rs.10,500/- on other heads apart from

compensation of Rs.50,000/- under no fault liability. The petitioners have lost her love and affection of their mother and suffered pain and suffering on account of untimely death of their mother. Therefore, this Court awards compensation of Rs.40,000/- towards pain and suffering. Accordingly the compensation amount awarded by the Tribunal is enhanced from Rs.60,500/- to Rs.90,000/- (Rupees Ninety Thousand only) together with interest @ 7.5% per annum instead of 9%. The respondents shall pay the said compensation amount jointly and severally. The petitioners are permitted to withdraw the entire compensation amount at once.

In the result, the appeal is allowed in part. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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(Pre-delivery judgment)

