HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 393 OF 2006

JUDGMENT:

This appeal is arising out of order, dated 09.09.2005, passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (for short, 'the Tribunal'), in O.P. No.281 of 2003.

2. The appellants are the legal heirs of the deceased by name, S.Malla Reddy, who died in a motor accident occurred on 31.03.2003 due to the rash and negligent driving of the driver of the lorry bearing registration No.AP 27U 7985. They claimed compensation of Rs.6,00,000/- against respondent Nos.1 and 2, who are owner and insurer of the said lorry. The Tribunal, on consideration of the evidence of P.Ws.1 to 4 and the documents Exs.A.1 to A.10 and Ex.B.1-copy of insurance policy, awarded compensation of Rs.3,94,000/- with interest at 9% per annum from the date of petition till realization. The appellants, being aggrieved by the quantum of compensation, have preferred this appeal for enhancement of compensation.

3. Heard Sri K.Venkat Ram Reddy, learned counsel for the appellants, and Sri K.Ashok Rama Rao, learned Standing Counsel for respondent No.2.

4. The point for consideration is, whether the appellants are entitled for enhancement of compensation?

5. Learned counsel for the appellants submits that appellant No.1-wife, appellant Nos.2 to 4-children and appellant No.6-mother of the deceased have claimed compensation of Rs.6,00,000/-, whereas, the Tribunal has awarded only Rs.3,94,000/-. It is further submitted that the compensation awarded by the

Tribunal is very meager and the Tribunal has not considered the correct income of the deceased while assessing the compensation. He further contended that the deceased was having some land and he was cultivating the same and to prove the same, the appellants filed pattadar passbook Ex.A.10.

6. The deceased was a milk vendor at the time of the accident and that fact was proved by P.W.3-owner of Raja Tea Point. But this witness did not state how much amount the deceased was earning by supplying milk to his tea point. In fact, the Tribunal has rightly appreciated the evidence on record and came to the conclusion that the deceased was earning Rs.3,000/- per month or Rs.36,000/- per annum. Further, there is no evidence on record to show that the deceased was cultivating land and earning some income. As there is no proof of income earned by the deceased by doing agriculture, his income on agriculture cannot be taken into consideration for the purpose of calculation of compensation. Merely possessing of agricultural land does not raise any presumption that the deceased was earning some income on the agricultural land, unless there is some positive proof of income on agricultural land. Therefore, I do not see any valid ground to interfere with the findings of the Tribunal in this regard.

7. Learned counsel for the appellants submits that the Tribunal has taken 1/3rd of annual income towards personal expenses of the deceased without considering the size of the family, which is consisting of six members, who are all dependents on the deceased and therefore, his contribution to the family would be more, as such, 1/4th of the income to be deducted towards his personal expenses. In support of his arguments, he placed reliance on the decisions of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation**

and another[1] and **Reshma Kumari and others v. Madan Mohan and others**[2].

8. In the light of the above decisions of the Supreme Court, keeping view the size of the family, 1/4th of the income of the deceased can be deducted instead of 1/3rd towards personal expenses of the deceased. When 1/4th is deducted, the contribution of the deceased to the family comes to Rs.27,000/- and the multiplier applicable to the age of the deceased is '16' and when the said multiplier is applied, the compensation towards loss of dependency comes to Rs.4,32,000/-.

9. Learned counsel for the appellants contended that the Tribunal has awarded meager amounts of Rs.5,000/-, Rs.2,000/- and Rs.3,000/- towards loss of consortium, funeral expenses and loss of estate respectively. It is obvious that the Tribunal ought to have awarded Rs.10,000/- toward loss of consortium, Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of estate.

10. Therefore, on considering the evidence on record, the compensation awarded by the Tribunal is enhanced as shown in the following tabular form:

S.No.	Head under which the compensation is awarded.	Amount awarded by the Tribunal Rs.	Enhanced amount in this appeal Rs.
1.	Loss of dependency	3,84,000-00	4,32,000-00
2.	Loss of consortium	5,000-00	10,000-00
3.	Funeral expenses	2,000-00	10,000-00
4.	Loss of estate	3,000-00	20,000-00
5.	Total	3,94,000-00	4,72,000-00

11. In the result, the appeal is allowed in part modifying the order passed by the Tribunal and the compensation awarded by the Tribunal of Rs.3,94,000/- is

[1] (2009) 6 SCC 121
[2] 2013(5) SCALE

enhanced to Rs.4,72,000/- with proportionate costs and subsequent interest @ 9% per annum from the date of petition till realization. Respondent Nos.1 and 2 are directed to deposit the amount within two months from the date of this judgment. On such deposit, the appellants are permitted to withdraw their shares as fixed by the Tribunal proportionately. The amount already deposited and withdrawn by the appellants shall include the total award of the compensation in this appeal. Appellant Nos.2 to 4 were minors by the date of award passed in the year 2003 and they are declared as majors. The appellants may approach the Tribunal with regard to any further clarification about the apportionment of the compensation. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

G. SHYAM PRASAD, J

Date: 03-02-2017
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