HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A. C.M.A. No.995 of 2010

JUDGMENT :

This is an appeal filed by claimants in M.V.O.P.No.515 of 2007 challenging the order, dated 26.2.2010 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy. The claimants filed original petition under Section 166 of Motor Vehicles Act claiming compensation of Rs.10,00,000/- on account of death of the deceased in the motor vehicle accident. The Tribunal on consideration of the evidence awarded compensation of Rs.4,26,250/- with interest at 7.5% per annum. The claimants having not satisfied with the quantum of compensation have preferred this appeal for enhancement of compensation.

(2) This is a claim for death. The appellants, who are the claimants, are seeking for enhancement of compensation in this appeal.

(3) The brief facts of the case are that on the intervening night of 3-4.6.2007, the deceased Nagore Basawaraj was travelling in a lorry bearing No.AP 24 V 4699 along with the load of jaggery of his employer. He was travelling from Bidar to Miryalguda and when the lorry reached near Nandikandi shivar on N.H.No.9 near Reliance Petrol Pump, the driver of the said lorry drove it in a rash and negligent manner at high speed and due to which, the lorry turned turtle resulting in severe injuries to the deceased and others. The deceased was shifted to Government Hospital at Sangareddy where he succumbed to the injuries while undergoing treatment. Police, Sadasivapeta, registered a case in crime No.155 of 2007 under Sections 337 and 304-A I.P.C. against the driver of the lorry. The claimants have made a claim against respondent No.1 – owner and the respondent No.2 – insurer of the crime vehicle

i.e., lorry bearing No.AP 24 V 4699 claiming compensation of Rs.10,00,000/- on account of death of the deceased. The 1st respondent has remained *ex parte* and the 2nd respondent filed counter denying the rash and negligent act on the part of the driver of the crime vehicle and also denied the manner in which the accident has occurred and the involvement of the crime vehicle and put the petitioners to strict proof of age, occupation and income of the deceased. It is also contended that the driver of the crime vehicle is not having valid driving licence at the time of accident, as such, insurer is not liable to pay any compensation to appellants. It is also contended that the motor vehicle was not insured with the respondent-insurance company. It is also contended that the claim of the appellants is highly excessive and exorbitant. It is further contended that the deceased travelled as an unauthorized passenger, as such, the insurance company is not liable to pay any compensation to claimants.

(4) The tribunal, on consideration of the evidence of witnesses P.Ws.1 to 4 and documents Exs.A1 to A7 and Ex.B1 – copy of policy, has held that the driver of the crime vehicle is liable for the accident and awarded compensation of Rs.4,26,250/- holding the respondent No.1 – owner and respondent No.2 – insurer jointly and severally liable to pay the compensation.

(5) The point for consideration in this appeal is, whether the appellants are entitled for enhancement of compensation ?

(6) Heard the arguments of learned counsel for the appellants Sri R.Vinod Reddy and the learned counsel for the 2nd respondent Sri C.V.Rajeeva Reddy.

(7) The learned counsel for the appellants submitted that the Tribunal has taken the age of the deceased as 30 years instead of 25 years. It is also submitted that the deceased was earning Rs.5,000/- per month and his employer P.W.3 has deposed to that fact, but the Tribunal has taken only Rs.3,000/- as his

notional income, though there is proof of income. It is also submitted that the Tribunal has awarded an amount of Rs.15,000/- each towards loss of estate and loss of consortium, which are very low and they required to be enhanced. The counsel for appellants placed reliance on decisions reported in *Sarla Verma and Others Vs. Delhi Transport Corporation and another* [1] and *Asha Verman and Others Vs. Maharaj Singh and Others* [2] and submits that the amount towards loss of consortium can be awarded up to Rs.1,00,000/-. It is further submitted that the loss of future earnings have to be calculated at 30% on the income of the deceased.

(8) The learned counsel for the 2nd respondent submitted that the tribunal has taken into consideration the notional income of Rs.3,000/- per month without there being any proof of income.

(9) This is an appeal preferred by the claimants challenging the quantum of compensation. The deceased was working as a Munim (Manager) and he was said to be a skilled employee. The Tribunal has taken income of the deceased as Rs.3,000/- per month for the purpose of calculation of loss of dependency.

(10) The Tribunal placing reliance on the evidence of P.W.3 has taken the monthly salary of the deceased as Rs.3,000/- per month. The reasons given by the Tribunal are that P.W.3 has stated in his evidence that the deceased worked as Munim at Sri Baswaraj Chitta Commission Agent, Gandhi Gunj, Bidar and to prove that, Ex.A7 – Salary Certificate is filed before the Court. Ex.A7 reveals that the deceased was working as Munim and earning Rs.5,000/- per month. The Tribunal, placing reliance on cross-examination of P.W.3, came to conclusion that no document is filed to prove the identity of P.W.3 and also for the identity of the shop and therefore, the amount of Rs.3,000/- was taken as a

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[1] 2009 (3) ALD 83 (SC)
[2] 2015 (6) ALD 24 (SC)

notional income of the deceased per month. Keeping in view the evidence, the tribunal rightly came to conclusion that the notional income of the deceased was Rs.3,000/- per month, which does not require any interference.

(11) It is contended by the learned counsel for the appellants-claimants that the age of the deceased was taken as 30 without considering the evidence on record that he was only 25 years old. The Tribunal has taken the post-mortem examination report - Ex.A5 and inquest report - Ex.A4 and basing on that, taken the age of deceased as 30 years. It is obvious that there is no independent witness examined by the claimants to prove the age of deceased was 25 years. Therefore, the Tribunal has rightly taken the age of the deceased as 30 years basing on the post-mortem and inquest report, which does not require any interference.

(12) It is also contended by the learned counsel for the appellants-claimants that the Tribunal has not considered the family and deducted 1/3rd towards personal expenditure of the deceased. The family of the deceased is consisting of 5 members and therefore in view of the decisions reported in *Sarla Verma's case* (supra) and in the case of *Reshma Kumari v. Madan Mohan* [3] the personal expenditure should be deducted at 1/4th from the income of the deceased. The multiplier applicable to the age of 30 years as per the decision rendered in *Sarla Verma's case* (supra) is '17'. Thus, the appellants are entitled for compensation of Rs.4,59,000/- (27,000 x 17) towards loss of dependency.

(13) In view of the foregoing reasons, on consideration of the evidence on record, the award passed by the tribunal is enhanced from Rs.3,96,240/- to Rs.4,59,000/- towards loss of dependency. The enhanced compensation is shown in the tabular form below :

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[3] 2013 (9) SCC 65

Head	Award by the Tribunal	Enhanced in the Appeal
Loss of Dependency	3,96,240	4,59,000
Loss of Estate	15,000	25,000
Lost of consortium	15,000	25,000
Total :	4,26,240	5,09,000

(14) In the result, the appeal is partly allowed modifying the award passed by the Tribunal enhancing the compensation from Rs.4,26,240/- to Rs.5,09,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization. No order as to costs.

(15) Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

31st March, 2017
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