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

M.A.C.M.A.No.785 of 2010

JUDGMENT:

The appeal is preferred by the claimant in O.P.No.1081 of 2008 on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short “the Tribunal) being dissatisfied with the quantum of award, dated 01.12.2009, for the death of the deceased in an accident that took place on 24.04.2008 at about 11 p.m near Rao’s Study Circle, Peeramcheruvu, Chevella-Hyderabad Road, involving the lorry bearing registration No.AP36W-3699 which was owned by the 1st respondent and insured by the 2nd respondent.

The facts in brief are that on 24.04.2008 at about 11 p.m near Rao’s Study Circle, Peeramcheruvu, Chevella-Hyderabad Road side, while the deceased was sleeping in front of his hut, the driver of the offending lorry came in a rash and negligent manner and ran over the deceased and later dashed a tree, as a result, the deceased died on the spot. The deceased was aged 22 years and he was hale and health and was working as blacksmith, earning Rs.8,000/- per month by the date of accident. The 1st respondent is the owner of the offending lorry and the 2nd respondent is the insurer.

The respondent/Insurance Company filed the counter denying its liability and averments made in the claim petition.

On behalf of the claimant, P.Ws.1 & 2 were examined and got marked Exs.A.1 to A.6. On behalf of the respondent, no oral evidence was adduced, but the insurance policy was marked as Ex.B1.

After hearing the arguments and perusal of the oral and documentary evidence, by the impugned award, dated 01.12.2009, the learned Tribunal awarded compensation of Rs.2,52,000/- against the claim of Rs.4,00,000/-

for the death of the deceased. Aggrieved thereby, the present appeal is preferred.

The learned counsel for the appellant submits that the Tribunal erred in taking into consideration the income of the deceased at Rs.3,000/- per month, even though it was claimed that the deceased, who was carrying on his avocation as a blacksmith, was earning Rs.8,000/- per month. The learned counsel further submits that the Tribunal also erred in deducting half of the income towards personal expenses as against the 1/3rd which ought to have been done. The learned counsel further submits that the Tribunal further erred in applying the multiplier of '14' as against the multiplier '18' which is applicable in the case of a person aged about 22-23 years. Therefore, the amount awarded by the Tribunal is liable to be enhanced.

The learned counsel for the insurance company submits that the amount awarded by the Tribunal is just and reasonable which do not warrant interference.

Heard both sides and perused the material on record.

The material on record shows that the accident involving lorry owned by the 1st respondent and insured by the 2nd respondent did take place at about 11 p.m. on 24.04.2008 when the deceased was sleeping in front of his house and the lorry came in a rash and negligent manner and ran over the deceased and thereafter hit against a tree. These facts are borne out from the oral and documentary evidence, and PW 2 being the eyewitness has spoken to about the accident and nothing is elicited from him for disbelieving his evidence. Therefore, the finding of the Tribunal that the accident took place due to rash and negligent manner on the part of the driver of the offending lorry do not warrant any interference.

The main contention of the claimant is about the quantum of compensation. As already stated, the claimant who is mother of the deceased claimed Rs.4,00,000/- for the death of the deceased, but the Tribunal has taken into consideration of the notional income of the deceased at Rs.3,000/- and by applying the multiplier '14' and taking into consideration the age of the mother of the deceased, has determined the compensation, which is incorrect.

As per the well settled principles, in case of death of an unmarried person, 50% of his income should be deducted towards personal living expenses and the remaining 50% should be taken as contribution to the family, and further, the proper multiplier to be applied is '18' but not '14' as applied by the Tribunal.

However, the claimant, who claimed that the deceased was earning Rs.8,000/- per month by carrying on his profession as blacksmith, could not produce any satisfactory evidence to that effect. Therefore, the Tribunal is justified in taking the notional income of the deceased at Rs.3,000/- per month and thereafter deducting 50% therefrom towards his personal living expenses. However, since the wrong multiplier was adopted, the amount needs to be recalculated as under:

Rs.3,000/- x 12 x 18	=	Rs.6,48,000/-
(-) 50%	=	Rs.3,24,000/-

		Rs.3,24,000/-
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Therefore, the claimant is entitled to a sum of Rs.3,24,000/- towards loss of dependency.

In addition to the above, the claimant being the mother of the deceased is also entitled to a sum of Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and another Rs.6,000/- towards funeral expenses. The total compensation comes to Rs.3,50,000/-, which is just and reasonable and which can be awarded to the claimant.

In the result, the MACMA is allowed in part, enhancing the compensation from Rs.2,52,000/- to Rs.3,50,000/- to the claimant, payable by respondents No.1 and 2 jointly and severally together with interest at 7.5% per annum from the date of petition till the date of realization. The claimant is entitled to withdraw the entire amount, as and when deposited, without furnishing any security.

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

M.S.K.JAISWAL,J

Date: 22.06.2017
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