

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.1074 of 2010

JUDGMENT:

This appeal is preferred by the Insurance Company, questioning the award dated 02.01.2009 passed in O.P.No.825 of 2007 on the file of the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal), by and under which, a sum of Rs.3,00,000/- was awarded to the respondents/claimants due to the death of one Saiprasad in an accident said to have taken place on 11.02.2007, involving the lorry bearing registration No.AP-12U-1593, which was owned by the 5th respondent herein and insured by the appellant/Insurance company.

The brief facts of the case are that on 11.02.2007 at 3 p.m the deceased along with his friend were proceeding on motorcycle and when they reached the outskirts of Narsing village, the crime lorry bearing registration No.AP-12U-1593 being driven by its driver came in opposite direction in a rash and negligent manner and dashed the motorcycle, as a result, the deceased who sat as pillion rider died and his friend who ride the motorcycle sustained injuries.

The contention of the appellant/insurance company is that the deceased was a boy, aged of 15 years, having no income, but the Tribunal erroneously taken into account the income of the boy as Rs.3,000/- per month and awarded a sum of Rs.3,00,000/-, which is excessive and exorbitant.

On the other hand, the learned counsel for the respondents/claimants submits that the deceased was a boy, aged about 15 years and the Tribunal has taken the notional income at Rs.3,000/- per month and deducted 1/3rd thereof and applied the multiplier applicable to the mother of the deceased

and awarded compensation. The procedure adopted by the Tribunal is erroneous. As a matter of fact, the claimants are entitled to more compensation than what has been awarded. The learned counsel further submits that even the Tribunal has found that the claimants are entitled to more compensation, but has restricted the award to Rs.3,00,000/- in view of the fact that the claimants themselves have filed the claim petition claiming compensation of Rs.3,00,000/-. Therefore, the learned counsel submits that there are no merits in the appeal and the same is liable to be dismissed.

Heard both sides and perused the material on record.

Admittedly, the deceased was a boy, aged 15 years and died in an accident on the date, time and place, as mentioned above. It is also not in dispute that the crime lorry belongs to the 5th respondent herein and insured by the appellant, and the policy is still subsisting and hence the appellant/insurance company is liable to pay compensation. The contention of the appellant/insurance company is that there is no rashness or negligence on the part of the driver of the offending lorry and it is on the part of the deceased and injured. The further contention of the appellant is that the Tribunal erred in taking the notional income of the deceased at Rs.3,000/- per month and deducting 1/3rd out of it towards personal expenses instead of deducting 50% thereof.

Since the factum of accident and the death of the deceased are not in dispute, there is no need to advert it. However, the contention of the appellant/insurance company that the driver of the offending lorry is not solely responsible for the accident is not supported by any cogent evidence. The evidence of PW 2, who is said to be the eyewitness, coupled with the documentary evidence placed by the investigating agency show that the

accident occurred due to rash and negligence on the part of the driver of the offending lorry.

With regard to quantum of the compensation, it is however found that the Tribunal has erred in adopting the multiplier '15' taking into consideration the age of the mother of the deceased. Similarly, the Tribunal has also erred in deducting 1/3rd out of the notional income instead of deducting 50%, which should be in the case of death of a person who is not married.

Therefore, the claimants are entitled to the compensation as under:

Notional income of the deceased to be taken @Rs.36,000/- p.a.

After deducting 50% thereof it would come to Rs.18,000/-

If appropriate multiplier '18' is applied, total loss of dependency works out to Rs.3,24,000/- (Rs.18,000/- x 18)

Since the claimants made the claim for only Rs.3,00,000/- they are entitled to the compensation of Rs.3,00,000/-, as awarded by the Tribunal.

In view of the above, I see no merits in the appeal. The MACMA is accordingly dismissed. No order as to costs.

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

M.S.K.JAI SWAL, J

Date: 13th June, 2017
Dsr