

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A. C.M.A. No.3492 of 2011

JUDGMENT :

This appeal is arising out of the order and decree, dated 30th September, 2008 in M.V.O.P.No.401 of 2007 on the file of the V Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Nellore.

(2) The appellant-APSRTC is the respondent in M.V.O.P. No.401 of 2007 filed by respondents-claimants under Section 166 of Motor Vehicles Act, claiming compensation of Rs.5,00,000/- for the death of the deceased in a motor vehicle accident. Claimant No.1 is the wife of the deceased and Claimant Nos.2 and 3 are their minor son and daughter respectively.

(3) The Tribunal, on consideration of the evidence on record, has allowed the petition in part awarding compensation of Rs.4,20,000/- to the claimants. Aggrieved by the award passed by the Tribunal, the APSRTC has preferred this appeal.

(4) The brief facts of the case are that on 1.2.2007, while the deceased was driving the scorpio car bearing registration No.AP 3W 4005 from Chennai to Nellore along with passengers, one R.T.C. bus bearing registration No.AP 28 Z 285 came in the opposite direction and dashed the scorpio on the front side. As a result of which, the deceased Gogula Mallikarjuna-alias-Mallikarjuna Rao sustained bleeding injuries and two persons, who were travelling in the said scorpio, died on the spot and another person died on the way to the headquarters Hospital, Nellore and others received grievous injuries. The deceased while undergoing treatment in Bollineni Super Speciality Hospital,

Nellore, died on the same day i.e., on 1.2.2007. The claimants have spent about Rs.20,000/- towards medical expenses while undergoing treatment and after death, the dead body was brought to his house in a car from D.S.R. Government Headquarters Hospital, Nellore by spending about Rs.5,000/- towards transport charges. The Station House Officer, Chillakur Police Station registered a case in Crime No.15 of 2007 under Section 304-A and 337 I.P.C. against the driver of the crime vehicle. The claimants claimed compensation of Rs.5,00,000/- against the respondent therein, who is the owner of the vehicle. The APSRTC filed counter denying that the accident occurred due to the rash and negligent driving of the driver of the bus. It is further contended that the owner and insurance company of the scorpio car are proper and necessary parties to the proceedings and the petition is liable to be dismissed for non-joinder of necessary parties and that the claimants have to prove that the driver of the scorpio car was possessing valid driving licence on the date of accident and therefore, prays to dismiss the petition. The Tribunal, on consideration of the evidence, allowed the petition in part by awarding compensation of Rs.4,20,000/-. Aggrieved by the same, the present appeal is preferred by the APSRTC.

(5) Heard the arguments for the learned standing counsel for the appellant-corporation Sri Aravala Rama Rao and the learned counsel for respondents Sri Koppula Gopal.

(6) The point for consideration in this matter is, whether the compensation awarded by the Tribunal is excessive?

(7) Learned counsel for the appellant-APSRTC submits that the Tribunal has fixed the income of the deceased at Rs.3,000/- per month, which is excessive and it has to be reduced. It is also further submitted that there is no proof for the income of the deceased that he was getting Rs.3,000/- per month.

Therefore, the calculation basing on income of Rs.3,000/- per month is incorrect and it has to be reduced.

(8) It is pertinent to note that time and again the Apex Court and other Courts have stated in many judgments that minimum wages have to be taken into consideration for calculation of compensation in case of a death where there is no evidence of proof of income. Admittedly, the deceased is a driver by profession. No doubt, there is no proof for the income of the deceased. However, the contention of respondents is that the deceased was earning Rs.5,000/- per month. It is not uncommon that the owners do not maintain the register for payment of salaries to the drivers. It may not even be possible for drivers in unorganised sectors to secure certificate for proof of income. Therefore, the Tribunal has rightly taken into consideration the income of the deceased at Rs.3,000/- per month. In the catena of decisions rendered by the Hon'ble Apex Court it was held that the income of the person employed in the unorganised sector can be taken at Rs.3,000/- per month and the same can be applied to this case also. Therefore, I do not find any force in the contention raised by the appellant in this regard.

(9) It is further submitted by the learned counsel for the appellant-APSRTC that the Tribunal has awarded medical expenditure of Rs.20,000/- without there being any proof of incurring such medical expenditure. It is the evidence of P.W.1 that they incurred Rs.20,000/- towards medical expenditure. The claimants might have incurred the medical expenditure, as the deceased was admitted in the Hospital immediately after the accident, but unfortunately he died on the same day. Therefore, the claimants are entitled for the medical expenditure spent in this regard. Therefore, there are no valid grounds to interfere with the finding of the tribunal with regard to awarding medical expenditure of Rs.20,000/- also.

- (10) In the result, the appeal is dismissed. No order as to costs.
- (11) Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

03rd March, 2017
skmr

GUDI SEVA SHYAM PRASAD, J.

