HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A. C.M.A. No.1054 of 2013

JUDGMENT :

This appeal is arising out of the order and decree, dated 5th December, 2012 in M.V.O.P.No.762 of 2010 on the file of the Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad.

(2) The appellants 1 to 3 are wife and two sons of the deceased. They filed M.V.O.P. No.762 of 2010 claiming compensation of Rs.8,00,000/- on account of the death of Chikka Dasu in a motor vehicle accident occurred on 21.6.2009. On the fateful day, while the deceased was returning from the bus stand, one APSRTC bus bearing No.AP 36 Y 0697, which was driven in a rash and negligent manner, dashed against him and the wheels of the bus ran over him. As a result of which, he died within half an hour. He was 37 years old and was working as Supervisor in Sri Sumangali Ladies and Gents Cloth Showroom, Kothapeta and drawing a salary of Rs.8,000/- per month and getting bonus of Rs.12,000/- per year. The Police, Bhongir registered a case in crime No.173 of 2009 under Section 304-A of I.P.C. against the drier of the APSRTC bus. The 3rd respondent is the owner and respondent Nos.1 and 2 are the custodians of the bus and respondent No.4 is the insurer of the bus who are jointly and severally liable to pay compensation. Respondent No.1 has remained *ex parte*. Respondent No.2 filed counter denying the allegations made above by petitioners with regard to their claim. The respondent No.3 remained *ex parte* and

respondent No.4 filed counter denying liability. Respondent Nos.5 and 6 filed counter stating that they are the parents of the deceased and they are aged about 55 and 53 years respectively and they are dependents on the deceased. On behalf of petitioners, P.W.1 – eyewitness to the accident was examined and P.Ws.2 and 3 are the witnesses examined to prove the income of the deceased and documents Exs.A1 to A7 were marked. On behalf of respondents, Ex.B1 - Policy is marked and no witnesses are examined. On consideration of the evidence, the Tribunal awarded compensation of Rs.6,65,000/- under various heads. The appellants, being aggrieved by the quantum of compensation, have preferred this appeal for enhancement.

(3) The point for consideration in this matter is:

Whether appellants are entitled for enhancement of the compensation awarded by the Tribunal?

(4) Heard arguments of learned counsel for appellants and respondents.

(5) Learned counsel for appellants submits that the deceased was working as Supervisor in Sri Sumangali Ladies and Gents Cloth Showroom, Kothapet and was drawing salary of Rs.8,000/- per month and getting bonus of Rs.12,000/- per year. The appellants got examined P.Ws.2 and 3 to prove the income of the deceased, but the Tribunal has disbelieved the evidence of petitioners and taken income of the deceased as Rs.4,500/- per month at the rate of Rs.150/- per day and it required to be enhanced.

(6) Learned counsel for respondents submits that the Tribunal has rightly taken the income of the deceased at Rs.150/- per day as the appellants have failed to prove the correct income of the deceased.

(7) It is obvious that the Tribunal has discussed the evidence of the witnesses P.Ws.2 and 3 and the document Ex.A6 and came to the conclusion that they are unable to prove that the deceased was drawing salary of Rs.8,000/- per month and taken notional income of Rs.4,500/- per month.

(8) Learned counsel for appellants placed reliance on ***Neeta v. Maharashtra State Road Transport Corporation***[1] and submitted that in a case of deceased working as a private employee or a self employee and in the absence of any documentary evidence placing on the notified minimum wages, income of Rs.12,000/- per month can be taken into consideration for the purpose of awarding compensation. As a matter of fact, in the instant case the deceased was said to be working in a cloth showroom as a supervisor, but as there is no sufficient evidence to prove his income, the Tribunal has taken notional income of Rs.4,500/- per month considering him as a daily wage earner. Therefore, the facts of the above case are different from the facts of the present case in assessing the income of the deceased.

(9) Learned counsel for appellants further submitted that the Tribunal has not awarded any amount for loss of estate and love and affection for the parents and that towards consortium, only an amount of Rs.15,000/- was awarded and for funeral expenses, an amount of Rs.2,000/- was awarded, which are very meagre amounts and sought for enhancement of the compensation under those heads. On consideration of the facts and

---

[1] 2015 (3) SCC 590

circumstances of this case, it is obvious that this is a case of death of a person aged about 40 years in a motor vehicle accident as per the evidence available on record. The Tribunal has awarded meagre amounts for funerals expenses and consortium and no amount was awarded for loss of estate and love and affection for the parents. On consideration of the facts of this case, it is appropriate to award an amount of Rs.2,00,000/- under all these heads, including conventional charges of Rs.50,000/- and future prospects.

(10) In the result, the appeal is partly allowed enhancing the compensation from Rs.6,65,000/- to Rs.8,65,000/-.

(11) Learned counsel for appellants submits that the Tribunal has awarded interest at the rate of Rs.6% which requires to be enhanced.

(12) In the light of the decisions reported in ***Reshma Kumari & Ors. Vs. Madan Mohan & Ors.***[2] and ***Rajesh & Ors. Vs. Rajbir Singh & Ors.***[3], the rate of interest is increased from 6% to 7.5%. No order as to costs.

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

GUDISEVA SHYAM PRASAD, J.

28th February, 2017

skmr

[2] 2013 (9) SCC 65
[3] 2013 (6) Scale 563