

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.113 of 2012

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants-petitioners seeking enhancement of compensation, challenging the order and decree dated 27.08.2010 in O.P.No.1698 of 2009 passed by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for brevity "the Tribunal"), awarding compensation of Rs.3,98,000/- as against the claim of Rs.8,31,000/- laid by them under Section 166/163-A of the Act, for the death of the deceased-Mallesha in a motor accident that occurred on 18.05.2009 at Raikal gate.

2. The appellants are petitioners, respondent Nos.1 and 2 are owners of the crime Bus bearing No.AP 28Z 4947 belonging to the A.P. State Road Transport Corporation (for brevity "the Corporation"). For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.1698 of 2009 before the Tribunal.

3. The brief facts of the case are that, on the fateful day i.e., on 18.05.2009 at 16.00 hours at Raikal gate, while the deceased-Mallesha and another were proceeding on a motor cycle, the driver of the Bus bearing No.AP 28Z 4947 belonging

to the Corporation drove it in a rash and negligent manner and dashed against the said motor cycle, as a result of which, the deceased sustained injuries and died. A case was registered against the driver of the crime bus. The petitioners, who are the legal heirs of the deceased, have filed the aforesaid O.P.No.1698 of 2009 claiming compensation of Rs.8,31,000/- against respondent Nos.1 and 2, who are Managing Director and Depot Manager, Kadiri Depot, respectively, of the Corporation. The deceased was hale and healthy and aged about 30 years. He was a Mason by profession and earning Rs.6,000/- per month by the date of accident. The respondents-Corporation filed counter contending *inter alia* that the petitioners have to prove the age and income of the deceased and the manner in which the accident had occurred. The respondents also denied rash and negligent driving on the part of the driver of the Bus and that the compensation claimed is highly excessive. The Tribunal, on consideration of the evidence of the witnesses PWs.1 to 3 and the documentary evidence under Exs.A.1 to A.7 adduced on behalf of the petitioners, and also the evidence of RW.1 adduced on behalf of the respondents-Corporation, awarded a compensation of Rs.3,98,000/- with interest at 7.5% per annum from the date of petition till the date of realization. Having dis-satisfied with the said amount of compensation awarded by the Tribunal, the petitioners have preferred the present appeal seeking enhancement of compensation.

4. Heard Sri C.M. Prakash, learned counsel for the appellants-petitioners and Sri C. Sunil Kumar Reddy, learned Standing Counsel for the respondents-Corporation. Perused the order under challenge and also the evidence on record.

5. Learned counsel for the appellants-petitioners mainly contended that the compensation awarded by the Tribunal is very meager and that the Tribunal has not taken into consideration the occupation and income of the deceased basing on the evidence on record. It is also contended that the deceased was aged about 30 years by the date of accident and he was working as a Mason by profession and earning Rs.6,000/- per month. In order to prove the occupation of the deceased, the petitioners have examined P.W.3, who is a colleague of the deceased, who was also working as a Mason and earning Rs.6,000/- per month.

6. Refuting the said contention, learned Standing Counsel for the respondents-Corporation contends that PW.3 is not an authorized person to prove the profession of the deceased and his evidence is not valid. Since there is no proof as regards the profession of the deceased, the petitioners are not entitled for enhancement of compensation.

7. Learned counsel for the petitioners placed reliance on the judgments of the Apex Court in SHIVAKUMAR M. v.

BMTC¹ and NEETA v. MAHARASHTRA SRTC² and submitted that even in the absence of any documentary evidence on record with regard to the employment of the deceased, the minimum wages have to be taken into consideration.

8. In SHIVAKUMAR's case (supra 1), the Apex Court has assessed the income of the deceased as Rs.15,000/- to Rs.16,500/- per month considering the fact that he was a Painter by profession.

9. In NEETA's case (supra 2), the Apex Court has taken the income of the deceased as Rs.12,000/- per month, who was working as a Carpenter by profession, in the absence of any proof of income.

10. On the other hand, learned Standing Counsel for the respondents-Corporation submits that in the above said two judgments of the Apex Court, the occupation of the deceased was proved to the effect that they are Painter and Carpenter, whereas in the instant case, there is no evidence to show that the deceased was working as a Mason and also stated that the Minimum Wages List was not filed to show the Minimum Wages existed in the year 2009. In view of the said facts and circumstances, learned Standing Counsel for the respondents-Corporation submits that as there is no evidence to prove that the deceased was working as a Mason, his

¹ (2017) 5 Supreme Court Cases 79

² (2015) 3 Supreme Court Cases 590

income may be taken into consideration as Rs.4,500/- per month and 40% future prospects may be awarded.

11. On consideration of the said representation of the learned Standing Counsel for the respondents-Corporation and in view of the facts and circumstances of the case, since there is no positive evidence on record to show that the deceased was working as a Mason and he was skilled labour, the income of the deceased can be taken as Rs.4,500/- per month and if the future prospects are taken into consideration as 40% on that amount, it comes to Rs.1,800/- and in total, the income of the deceased can be taken as (Rs.4,500/- + Rs.1,800/-) Rs.6,300/- per month.

12. It is further submitted by the learned counsel for the petitioners that the deceased had 4 dependants on him and in view of the decision in the case of SMT. SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER³, after deducting 1/4th towards personal expenses of the deceased (Rs.6,300/- x 1/4), it comes to Rs.4,725/-, which is the contribution to the family per month and per annum, it comes to Rs.56,700/- and after applying the appropriate multiplier '16' applicable to the age group of the deceased, it comes to Rs.9,07,200/-. Further, the Tribunal has granted Rs.14,000/- only under the 'consortium' head, which is required to be enhanced to Rs.70,000/- in the light

³ 2009 (6) SCC 121

of the decision rendered in the case of NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI⁴. Therefore, the petitioners are entitled for a total compensation of Rs.9,77,200/-.

13. Thus, the appellants-petitioners are entitled for the compensation more than what was claimed, in view of the principle laid down by the Apex Court in NAGAPPA Vs. GURUDAYAL SINGH⁵, wherein the Apex Court opined that since the provisions of the Act have no restriction to award the compensation more than claimed and in appropriate cases, where from the evidence brought on record, the Courts feel that the claimant is entitled to get more compensation than claimed, the Courts may award such compensation but the only embargo is that it should be just compensation, but should neither be arbitrary, fanciful nor unjustifiable from the evidence.

14. Accordingly, the Civil Miscellaneous Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.3,98,000/- to Rs.9,77,200/- (Rupees nine lakhs seventy seven thousand two hundred only) with interest at 7.5% per annum from the date of petition till the date of realization. The appellants are directed to pay the Court fee over and above their claim awarded in this case. The respondents-Corporation is directed to deposit the said amount of

⁴ 2017 SCC OnLine SC 1270

⁵ 2003 (2) SCC 274

compensation within two months from the date of receipt of a copy of this judgment. On such deposit, the appellants/petitioners are permitted to withdraw the entire amount of compensation as apportioned by the Tribunal. No order as to costs.

15. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

16.02.2018.
Msr



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