

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3234 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants aggrieved by the grant of compensation of Rs.5,01,000/- as against a claim of Rs.10,00,000/- by the learned Chairman, Motor Accident Claims Tribunal – cum – I Additional District Judge at Nalgonda (for short, “the Tribunal”) *vide* order, dated 30.10.2002, passed in O.P.No.399 of 1999.

2. Heard the submissions of the learned counsel appearing for the appellants/claimants and the learned Standing Counsel representing the New India Assurance Company Limited appearing for respondent No.2, and perused the record.

3. Learned counsel for the appellants/claimants would contend that the Tribunal granted compensation of Rs.5,01,000/- as against a claim of Rs.10,00,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit with proportionate costs on account of the death of one Nooli Kumar (hereinafter, referred to as “the deceased”), who died in a motor accident that occurred on 15.02.1999, and the same is meagre; that the deceased was working as a Mechanic in Deccan Cement Factory and earning Rs.7,500/- per month as salary; that the Tribunal had taken only Rs.4,000/- as salary of the deceased, having deducted 1/3rd thereof, applied multiplier “15.15” and assessed an amount of Rs.4,84,860/- towards compensation for loss of dependency, Rs.15,000/- towards loss of consortium,

Rs.2,000/- towards funeral expenses and in all, granted an amount of Rs.5,01,000/-; that there is Ex.A-4 – salary certificate to prove the income of the deceased and also there is evidence of P.W.2, who categorically deposed about the payment of salary as mentioned in Ex.A-4 and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel representing the New India Assurance Company Limited for respondent No.2 would contend that the Tribunal had taken all the factors into consideration and applied suitable multiplier for the age of the deceased and awarded just and reasonable compensation; that there are no circumstances to enhance the compensation and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on both sides, the short point that falls for determination is:

“Whether the appellants/claimants are entitled for enhancement of compensation as prayed?”

6. **POINT:-** There is no dispute that the deceased succumbed to injuries suffered by him in a motor accident caused on 15.02.1999 due to the rash and negligent driving of the driver of lorry bearing No.AP-12-T-5501. The only dispute is with regard to enhancement of compensation. There is evidence of P.W.2 that the deceased was working as a Mechanic in Deccan Cements Factory and drawing the benefits as mentioned in Ex.A-4. The Tribunal, while dealing with this matter, held that Ex.A-4 – salary certificate was issued on 01.03.1999 by the Senior Manager (Personnel), but the said Senior Manager (Personnel) was not examined to prove the

salary of the deceased. Further, the Acquittance Register is not produced before the Court to arrive at a conclusion that the deceased was getting Rs.4,859/- as salary as exhibited under Ex.A-4. The Tribunal had taken the monthly income of the deceased as Rs.4,000/-, deducted 1/3rd thereof towards his personal expenses, applied "15.15" multiplier for the age of "34" and ultimately, assessed the compensation payable as indicated above. As per the evidence on record, it can be safely concluded that the deceased was working as a Mechanic in Deccan Cements Limited. Under Ex.A-4, it is mentioned that the deceased was getting an amount of Rs.4,859/- towards salary and some more amount towards Bonus, LTA, Medical allowance etc. In all, the deceased was getting an amount of Rs.7,464/-. Merely because Acquittance Register is not produced and the Senior Manager (Personnel), who issued Ex.A-4 certificate was not examined, it cannot be said that the deceased was not getting the amounts as mentioned in Ex.A-4. Ex.A-4 can be relied upon to take the monthly salary of the deceased as Rs.4,859/-. Since the deceased was a permanent employee and aged 34 years, hike in salary is required to be taken as 50%, but some amount is required to be deducted towards the Income Tax. So, if this is taken into consideration, definitely, the claimants will get some enhanced compensation. When hike in the salary is taken, some amount is required to be deducted as income tax. Considering these aspects, the total salary of the deceased can be taken as Rs.6,000/-. 1/3rd thereof i.e., Rs.2,000/- has to be deducted towards his personal expenses. 2/3rd is taken as contribution of the deceased to the claimants and by applying the multiplier "16" for the age of "34" of

the deceased, the loss of dependency comes to Rs.7,68,000/- (Rs.4,000/- x 12 = 48,000 x 16). Claimant No.1/wife is entitled for a sum of Rs.40,000/- towards loss of consortium; the claimants are also awarded an amount of Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards loss of estate, as per the decision in **National Insurance Company Ltd., Vs. Pranay Sethi and others**¹.

7. Thus, the appellants/claimants are entitled for a total compensation of Rs.8,38,000/- (Rs.7,68,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-). (Rupees eight lakhs thirty eight thousand only) with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

8. Accordingly, this appeal is allowed in part modifying the order, dated 30.10.2002, passed in O.P.No.399 of 1999 by the Tribunal, enhancing the compensation from Rs.5,01,000/- to Rs.8,38,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The 1st appellant/1st claimant, who is the wife of the deceased, is entitled to 50% of the enhanced compensation and interest thereon. The other appellants/claimants 2 and 3 are entitled to share the remaining amount and interest thereon equally. There is no change in the other conditions or directions imposed by the Tribunal. On deposit of the enhanced compensation, the appellants/claimants are permitted to withdraw the entire amount along with the accrued interest. There shall be no order as to costs.

¹ 2017 (6) ALD 170 (SC)

9. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 27.07.2018
AMD



THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



M.A.C.M.A.No.3234 OF 2005

Date: 27.07.2018

AMD