

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 329 OF 2011

JUDGMENT:

The appellants are the claimants. They are the legal heirs of one Goli Vijaya Krishna (hereinafter referred to as 'the deceased'), who is the son of appellants 1 and 2 and brother of appellants 3 and 4. They filed this appeal against the award and decree dated 24.09.2008 passed in M.V.O.P.No.965 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur, granting compensation of Rs.1,65,000/- against the claim of Rs.9 lakhs for the untimely death of the deceased in the motor accident occurred on 26.11.2007.

2. The appellants filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988, alleging that the deceased was aged 19 years and was studying B.Tech. III year. On 26.11.2007, while he was proceeding on a motorbike, as a pillion rider, from Nagarjunasagar to Macherla and when they reached near Yesaish Swamy Temple, one lorry of 1st respondent bearing No.AP23W 1006 dashed against the motorbike, as a result of which, the deceased received multiple injuries and died while undergoing treatment at Government General Hospital, Guntur. The said fact is not disputed by the respondents.

3. As the claim petition was filed under Section 163-A of M.V. Act, the rash and negligence of the offending vehicle

need not be proved. But, the factum of death or suffering injuries in the motor accident is to be proved.

4. As per the evidence of PW1 and PW2 coupled with documentary evidence Exs.A.6 to A.9, the deceased was aged about 19 years and was studying B.Tech. III year as on the date of accident i.e., 26.11.2007. The deceased was a non-earning member. Since the claim petition was filed under Section 163-A of M.V. Act., as per Second Schedule, the income of the deceased has to be taken as Rs.15,000/- per annum. Accordingly, the Tribunal had taken notional income of the deceased as Rs.15,000/- per annum and therefrom 1/3rd was deducted towards his personal expenses, and the loss of dependency was taken as Rs.10,000/- per annum.

5. However, the Tribunal wrongly applied the multiplier “15” taking the age of the mother of the deceased as 40 years. But, the Tribunal ought to have applied the multiplier “16” as the age of the deceased was 19 years. Thereby, the loss of the income due to the claimants family could be Rs.1,60,000/- (Rs.10,000/- X 16), whereas the Tribunal granted Rs.1,50,000/-.

6. In addition to the above, the Tribunal granted Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral and incidental expenses. But, the appellants-claimants are entitled for Rs.15,000/- towards funeral and incidental expenses and Rs.15,000/- towards loss of estate as

per the judgment of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others*¹.

7. The appellants have lost their son and brother respectively and thereby lost the love and affection of the deceased. Therefore, they are entitled for Rs.20,000/- (Rs.5,000/- each) and Rs.15,000/- towards transportation. As the deceased was expired while undergoing treatment in Government hospital, they grieved inconsolably for the grievous injuries sustained by the deceased, for which the appellants are entitled for Rs.20,000/- towards mental agony and sufferance. It cannot be ruled out the possibility that the appellants might have spent some amounts towards medical expenses. For which, the appellants are entitled for Rs.25,000/- towards medical expenses and extra-nourishment even though the treatment was given in the Government hospital. Hence, it is just and reasonable to enhance the compensation from Rs.1,65,000/- to Rs.2,70,000/-.

8. The Tribunal had rightly granted interest @ 7.5% taking into consideration the prevailing bank interest rate and the same could not be said to be on higher side.

9. Accordingly, the appellants are entitled to the compensation of Rs.2,70,000/- with interest at 7.5% per annum from the date of petition till realization. The

¹ 2017(6) ALD 170 (SC)

compensation is payable by the respondents jointly and severally within two months from the date of receipt of a copy of this judgment.

10. The appeal is partly allowed to the extent indicated above. No order as to costs.

11. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

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