THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2227 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 31.07.2006 passed in O.P. No.622 of 2004 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Karimnagar (for short, 'the Tribunal'), whereby the Tribunal granted Rs.3,20,144/- with interest at 7.5% per annum as compensation in favour of the appellants, as against the claim of Rs.14,00,000/- for the death of Theegulla Anil Reddy @ Anil Kumar in a motor accident occurred on 05.05.2004 due to the rash and negligent driving of the 1st respondent-driver of tipper bearing registration No.MP-23-DA-2303.

2. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the 3rd respondent-insurer, apart from perusing the material on record. Though notice was served on respondent No.1, none appeared on his behalf. The appeal against the 2nd respondent-owner of the offending vehicle was dismissed for default vide the order dated 05.07.2016. However, dismissal of the appeal for default against the 2nd respondent-owner of the offending vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[1], wherein it is held that:

> "If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the

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[1] 2001(1) ALT 495 (D.B.)

> absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

3. Learned counsel for the appellants-claimants would contend that the deceased was having a poultry farm and also doing agriculture and was earning Rs.11,000/- per month; he filed income tax returns for the years 2002-03, 2003-04 and 2004-05 under Exs.A.5, A.7 and A.8; the Tribunal had not considered the income tax returns, wherein the annual income of the deceased was Rs.52,000/- from the poultry farm and Rs.46,000/- from the agriculture; the Tribunal granted meagre compensation without taking into consideration the earnings of the deceased; and ultimately, prayed to enhance the compensation.

4. On the other hand, the learned Standing Counsel for the 3rd respondent-insurer would contend that the Tribunal had rightly assessed the compensation; there is no single document to show that the deceased was owning and cultivating agricultural land; there is no tax payment challans; the Tribunal had assigned number of reasons in not considering the copies of income tax returns filed by the appellants-claimants; the Tribunal granted just and reasonable compensation; there are no circumstances to enhance the compensation; and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to the death of the deceased-Theegulla Anil Reddy in a motor accident occurred on 05.05.2004 due to the rash and negligent driving of the driver of the tipper bearing registration No.MP-23-DA-2303. There is also no dispute with regard to the insurance policy of the offending vehicle with the 3rd respondent-insurer. The short point that falls for determination is, whether the appellants-claimants are entitled for enhancement of compensation?

6. The contention of the appellants-claimants is that the deceased was personally cultivating agricultural land and also carrying on poultry business and earning Rs.11,000/- per month and used to contribute the earnings on the appellants, who are his wife and parents. To substantiate the contentions, the 1st appellant deposed as P.W.1 and examined P.Ws.2 and 3 and got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of inquest report, Ex.A.3-attested copy of post-mortem examination report, Ex.A.4-attested copy of charge sheet, Ex.A.5-Income tax return Form No.2-D along with assessments for the year 2002-03, Ex.A.6-Tax paid receipt for the year 2003-04, Ex.A.7-Income tax return details for the year 2003-04, Ex.A.8-Income tax return for the year 2003-04 along with assessment, Ex.A.9-Tax receipt for the year 2004-05, Ex.A.10-Assesses and return details for the year 2004-05, Ex.A.11-Form No.2 income tax return along with assessment for the year 2004-05, Ex.A.12-Driving licence of the deceased, Ex.A.13-Original Secondary School Certificate of the deceased and Ex.A.14-Poultry farm permission certificate issued by the Sarpanch Jaipur.

7. P.W.1 is the wife of the deceased. She supported the averments of the claim petition. The appellants have also placed on record Exs.A.5, A.7 and A.8, i.e., income tax returns for the assessment years 2002-03, 2003-04 and 2004-05. Exs.A.6 and A.9 are the tax paid receipts for the years 2003-04 and 2004-05. Except Exs.A.5 to A.9, the appellants have not filed any challans to show that the deceased had paid income tax and the submission of income tax returns without challans is of no use. Further, Ex.A.14 reveals that permission was obtained by the deceased from the Sarpanch, Jaipur, to establish a poultry farm. Except Ex.A.14, the appellants have not filed a single document to show that the deceased was owning or cultivating any agricultural land.

8. As per the record, the deceased passed Secondary School Certificate, i.e., 10th class. After analysing the entire evidence, the Tribunal took monthly income of the deceased as Rs.2,000/- and assessed the loss of

dependency payable to the appellants-claimants. Learned counsel for the appellants-claimants relying on the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**[2], would contend that 50% of hike in the salary of the deceased is required to be taken and an amount of Rs.70,000/- is to be paid towards conventional amount. In Ex.A.2-attested copy of inquest report, there is mention that the occupation of the deceased as 'poultry business'. Taking the totality of the circumstances into consideration and also future hike of the salary, monthly income of the deceased can be taken as Rs.5,000/-. As the dependents are three in number, 1/3rd of the income of the deceased is to be deducted towards his personal expenses and 2/3rd is required to be taken as the contribution of the deceased to the family. The age of the deceased at the time of the accident was 28 years. Suitable multiplier is '17' as per the decision of the Hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another**[3]. Therefore, the loss of dependency comes to Rs.6,80,000/- (Rs.5,000/- x 2/3 x 12 x 17). Besides the said amount, the 1st appellant-wife of the deceased is entitled to Rs.40,000/- towards loss of consortium and all the appellants-claimants are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. In all, the appellants-claimants are entitled to Rs.7,50,000/- as compensation. The Tribunal awarded interest at the rate of 7.5% per annum on the amount granted as compensation from the date of petition till realisation. The appellants-claimants are entitled to the same rate of interest, i.e., 7.5% per annum on the enhanced amount of compensation from the date of petition till date of deposit.

9. In the result, this appeal is allowed in part and the order dated 31.07.2006 passed by the Tribunal in O.P. No.622 of 2004 is modified and the amount of compensation of Rs.3,20,144/- granted by the Tribunal is enhanced to

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[2] 2017(6)ALD 170(SC)
[3] 2009 (6) SCC 121

Rs.7,50,000/- with interest at 7.5% per annum from the date of petition till date of deposit. On deposit of the enhanced compensation with interest, the 1st appellant-wife of the deceased is entitled to half of the enhanced compensation and the remaining half shall be apportioned equally between appellant Nos.2 and 3, who are the parents of the deceased. The appellants-claimants are entitled to withdraw their entire amounts.

10. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 10.07.2018
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