HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A.No.2155 of 2009

JUDGMENT

The appellants/Petitioners aggrieved by the award and decree dated 13.09.2007 in O.P.No.458 of 2004, passed by the Chairman the Motor Accident Claims Tribunal (VII Additional District Judge) at Nizamabad, preferred this appeal and contending that the Tribunal erred in considering the evidence of P.W.1 and P.W.2. and failed to consider the Ex.A11 and wrongly held that deceased's income was Rs.15000/- only per annum, wrongly taken age of the mother of the deceased as 40 years instead of 38 years and applied wrong multiplier, failed to grant compensation for pain and agony, transportation, funeral expenses, medical expenses.

2. On the other hand, the 2nd respondent filed a counter affidavit, denying all the allegations as to the occurrence of the accident and disputed the claim of the petitioners for compensation. He alleged that the driver of the jeep had no valid and effective driving licence at the time of accident and further contended that the trial Court well considered both oral and documentary evidence came to the right conclusion and awarded just compensation and the award do not suffer from any legal infirmities warranting interference.

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The claim for the appellant/petitioner in brief is as follows:

3. On 31.10.2003, the deceased was travelling on the auto rickshaw bearing No. AP.25U 4743. When he reached outskirts of Mupkal village at 7.54 P.M. a jeep bearing No. AP-IC/t3777 came

with high speed from wrong side of the road, dashed the auto rikshaw, as a result the deceased sustained serious injuries and died on the way to the hospital. The deceased was 20 years and was doing several business including fish and milk business, thereby was earned Rs,12,000/- per month. The respondent No.1 and 2 are being owner and insurer, jointly and severally liable to pay the compensation.

4. Heard the learned counsel for the appellants/petitioners and earned counsel for the respondents.

5. Basing on the pleadings, the Tribunal has framed following issued:

1. Whether the accident was due to rash and negligent driving of the jeep bearing No. AP IC 3777 by its driver?

2. Whether the petitioners are entitled for compensation. If so, to what amount and against which of the respondents

3. To what relief ?

6. During the course of trial, the claimants got examined P.W.s 1 and P.W.2 and marked Exs A1 to A11 on their behalf, and no evidence is let in by the respondents but Ex.B1 was got marked on its behalf.

7. There is no dispute that the accident occurred on 31.10.2003 and involvement of jeep bearing No. AP-IC/t3777 in the accident.

8.. The petitioners are the parents of the deceased. Being the parents of the deceased Bamani Praveen, they filed the claim petition. P.W.1 Bamani Lingam, father of the deceased, is admittedly not an eye witness to the accident. P.W.2, is the eye witness to the accident, whose evidence is corroborated with Ex.A1- Copy of the FIR and Ex.A2-Charge Sheet. The consistent evidence of P.W.2 is that on 31.10.2003 at about 7.30 P.M., while he was travelling along with the deceased and another by name Sravan from Mupkal village to Kisannagar in an auto rikshaw, which was going on left side of the road, one jeep came in opposite direction, in rash and negligent manner dashed the auto. Praveen, the deceased, sustained multiple injuries and died while undergoing treatment. Ex.A1 is the certificate of F.I.R., wherein there is a specific assertion that while the complainant along with deceased were travelling in Auto Rikshaw bearing No. AP-25U-4743 at about 7.30 P.M. a jeep bearing No.AP IC/T3777 came from Armoor side with high speed with rash and negligent manner dashed the Auto, in which they were travelling. The Investigating Officer, after thorough investigation, filed a charge sheet which was marked as Ex.A2, alleging that on 31.10.2003 the deceased along with others were proceeding in Auto bearing AP-25-U-4743 from Mupkal village to Krishna Nagar on the way in National High Way -7, after crossing Vamandas Petrol Bunk, the driver of the jeep coming from Armoor side with rash and negligent manner dashed the auto. The inquest report under Ex.A.3 opined that a driver of the jeep drove with rash and negligent manner, resulting injuries to the deceased and while undergoing treatment, succumbed to injuries. The Tribunal after elaborate discussion on evidence of P.W.2 and seeing the documentary evidence under Ex.A.1 to A-3 came to the right conclusion that the driver of the jeep bearing No. AP IC/T3777, drove the jeep in high speed in rash and negligent manner, without following the traffic rules dashed the auto, in which the deceased was travelling at the time of accident.

9. In such circumstances, I find that the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the jeep bearing No. IC/T3777 and there is no negligence on the part of the Auto Rikshaw driver is legal and tenable.

10. The contention of the appellant is that the Tribunal erred in considering the age of the mother of the deceased i.e. 2nd petitioner as 40 years instead of 38 years and applied wrong multiplier. The Tribunal after thorough verification and as per the inquest report rightly came to the conclusion that the age of the mother of the deceased is 40 years.

11. It is evident from the Ex.A.1- copy of the F.I.R., A-2-charge sheet, Ex.A.3- inquest report and Ex.A.4-post mortem report, Ex.A6 S.S.C. Memo, Ex.A.7- copy of employment card, Ex.A.8- Transferred certificate of the deceased, Ex.A.9-conduct certificate of the deceased, Ex.A.10 Bonafide Certificate, that as on the date of the accident the deceased Praveen was doing 2nd year Intermediate. As per Ex.A.6 the deceased passed S.S.C.in the year 2002. Ex.A.8- Transfer Certificate shows that the deceased admitted in intermediate on 22.06.2002. Ex.A.9, Ex.A.10 goes to suggest that the deceased studied intermediate 1st year during the years 2002-2003 and accordingly by the date of accident i.e.,31.10.2003, he was studying Intermediate II year. It is also evident from Ex.A.7 that he was registered in Andhra Pradesh Employment Exchange with S.S.C

qualification . As per the Ex.A.6-S.S.C. certificate, Ex.A8-Transfer certificate and also as mentioned in Ex.A.1 to Ex.A.3, he was Intermediate 2nd year student and aged 20 years by the date of accident as he was born on 11.03.1986. Ex.A.11 is annual income certificate issued to the deceased. The evidence of P.W.1 is that by the date of accident the deceased was doing fish business and other businesses and thereby he was earning Rs.12,000/- per month. The petitioners mainly relied upon Ex.A11 income certificate dated 07.07.2006 issued by the Mandal Revenue Officer, Balkonda. It shows that on the strength of the certification of the Panchayat Secretary and Mandal Revenue Inspector, Balkonda, the annual income of the deceased was Rs.95,000/- . In Ex.A.11- Income certificate, the M.R.O. certified that it has been issued only basing on the certification made by the Panchaytat Secretary and Mandal Revenue Inspector it is not known as to what basis the Panchayat Secretary and M.R.I certified that the petitioner was doing business and earning Rs.95,000/- per month, more particularly when the deceased was studying Intermediate II year and it is against the occupation recorded in Ex.A.1 to Ex.A.3. The deceased, as discussed above, was not earning member. Since, the deceased was a non earning member, his income has to be fixed notionally as Rs.15,000/- per annum. After 1/3 rd reduction of the annual income, towards his personal expenses and self maintenance, the balance remains is Rs.10,000/-. It is undisputed fact that the deceased was unmarried by the date of accident. The Hon'ble High Court of A.P. in United India **Insurance Company Ltd. Vs. Mallikarjuna and others 2007 ACJ page 1453** held that in case of death of an unmarried person, the age of younger of the parents of the deceased has to be taken into account for choosing appropriate multiplier. The second petitioner is mother of the deceased and her age was 38 years in the claim petition. But in Ex.A.3-Inquest report, her age was mentioned as 40 years.

12. As per the authoritative decision of the Apex Court in *SARALA VERMA* case, the relevant and appropriate multiplier applicable for the age of 40 years of the deceased is 15.

13. There is no dispute that the deceased is a fisherman and the 2nd petitioner / claimant occupation mentioned as house hold. The Tribunal erred in considering the income of the deceased on the date of death at Rs.15,000/- per annum. Even in case of labourer or house wife, the minimum income shall be Rs.3000/- per month.

14. Further held that considering that the appellant/ claimant was self employed and was 24 years of age, we hold that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in Santosh Devi v. National Insurance Company Limited further held that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying **Susamma Thomas**, **Trilok Chandra** and **Charlie**), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two

units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

15. It is undisputed fact that the deceased was unmarried by the date of accident. The Hon'ble HighCourt of A.P. in United India Insurance Company Limited V/s. Mallikarjuna and others, 2007 ACJ page 1453 held that in case of death of an unmarried person, the age of younger of the parents of the deceased has to be taken into account for choosing appropriate multiplier. The second petitioner is mother of the deceased and her age is shown as 38 years in the claim petition, but as can be seen from Ex.A3-Iinquest Report her age is mentioned as 40 years. This Tribunal considering the age of the mother of the deceased as 40 years, used appropriate multiplier as 15 . There is no error apparent in applying the multiplier 15. In the same decision the apex court held that while determining the compensation payable on account of the death of an unmarried person, the age of the younger of the parents must be taken into account. The deceased was aged about 20 years and his mother, the 2nd petitioner was aged about 40 years, at the relevant point of time. The suitable multiplier must have been selected, on the basis of the age of the 2nd petitioner.

16. In the instance case, parents are dependents of the deceased. Therefore, 50% of the income is deducted towards living expenses of the deceased. Having considered the monthly income at Rs.3,000/- per month, the annual income of the deceased comes to Rs.36,000/-, deducting 50% towards his expenses it comes to Rs.18,000/- shall be considered as his contribution to the family by applying the multiplier

15 comes to 15 X Rs.18,000/- = Rs.2,70,000/-. Since he is a student and bachelor, not having permanent employment and not a salaried person the petitioner may not be entitled to future prospects and the Tribunal rightly has not granted any such amounts towards future prospects. Besides that the petitioners are entitled to Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards loss of love and affection of their son. The petitioners are also entitled for another amount of Rs.3,000/- towards transportation expenses as claimed by the appellants because as per the evidence of P.W.1 while shifting to the Government Hospital on the way the deceased succumbed to injuries.

17. In view of the above issues the total compensation is arrived at as follows:

Compensation for loss of earnings	Rs.	2,70,000-00
Compensation for loss of estate	Rs.	15,000-00
Compensation towards love and Affection	Rs.	15,000-00
funeral expenses	Rs.	15,000-00
Transportation	Rs.	3,000-00
Total Compensation	Rs.	3,18,000-00

18. By virtue of Ex.A.5/ Ex.B.1- Insurance Policy, which is in force by the date of accident, the 2nd respondent has to indemnify the liability of the 1st respondent and accordingly the respondents 1 and 2 jointly and severally liable to pay the compensation.

19. In the result, the appeal is allowed with costs, by setting aside the award and decree dated 13.09.2007 in O.P.No.458 of 2004, passed by the Chairman the Motor Accident Claims Tribunal (VII Additional District Judge) at Nizamabad,. The amount awarded by the

Court below is modified to a total amount of Rs.3,18,000/-(Rupees three lakhs eighteen thousand only towards compensation to the appellant/petitioner. Consequently, the respondents are directed to deposit the total compensation of Rs.3,18,000/- together with interest @ 7.5% per annum from the date of petition i.e. 29.03.2004 till the date of payment or deposit, after deducting the amount, if any, already paid, within a period of 30 days from the date of receipt of a copy of this judgment.

20. On such deposit, the appellants/petitioners are permitted to withdraw the said amount equally.

21 Advocate fee is Rs.2,500/-

22. Miscellaneous petitions pending consideration, if any in the appeal shall stand closed in consequence.

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JUSTICE N.BALAYOGI

Dated: 05-01-2018

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