HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 960 OF 2007

JUDGMENT:

Against the order award dated 12.10.2006 passed in MVOP No. 460 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-Prl. District Judge, Kurnool, the present appeal is filed by Aluru Sumathi, the claimant in the aforementioned OP.

The parties will hereinafter be referred to as they are arrayed in the aforementioned OP.

The factual background of the case is briefly stated as under,

That the petitioner is only the daughter of her father Aluru Suryanarayana Reddy who died in an accident dated 24.1.2005. It is asserted by the petitioner that on 24.1.2005 at about 6.30 A.M. her father Suryanarayana Reddy started from his house on his Hero Honda motor cycle bearing No. AP 21 A 5311 from Bandarlapalli market yard check post to go to Thadipathry, and while he was proceeding towards Thadipathry, at about 7.00 A.M. when he reached near Venkatareddypalli on Thadipathri Bugga road, a tractor bearing No. KA 36 T 2534, driven by its driver in a rash and negligent manner, came with high speed opposite to the motor cycle of her father, and dashed the motor cycle driven by him, and thus he fell down from his motor cycle and died on the spot. His wife died within 20 days after death of her husband due to sudden death of her husband in the accident. Based on the report given to the Station House

Officer, Tadipathri Rural Police Station, a case in Cr.Nos. 11 of 2005 was registered under Section 304-A IPC against the driver of the tractor bearing No. KA 36 T 2534 and was investigated into. It was also asserted by her that her father prior to the accident, her father was hale and healthy and he was 49 years old by the date of his death in the accident. He was working as a Supervisor in Bandarlapalli market yard check post and drawing a salary of Rs.12,000/- per month. He was also getting income of Rs.70,000/- per annum through cultivation agriculture. The petitioner, having lost love and affection and earnings of her father, laid the claim for compensation of Rs.13.00 lakhs as against the owner and insurer of the offending tractor.

The owner of the tractor did not choose to contest the case filed by the petitioner. Resisting the claim of the petitioner, counter was filed by the insurer of the offending tractor. It was pleaded by the insurance company that there was no rash and negligence on the part of the driver of the tractor, and that the accident took place only due to the negligent driving of the motor cycle by the deceased, and that the deceased had no valid driving licence to drive the motor cycle at the relevant point of time. It was also contended by the insurance company that the terms and conditions of the policy of the tractor were breached by its owner by handing over the tractor to a person who had no valid driving licence to drive the tractor, as such the 2nd respondent cannot be held liable to pay the compensation to the petitioner. The other contention asserted by the insurance company in its counter was that the petitioner was not the dependent of the deceased, therefore she cannot claim any compensation in respect of his death.

The petitioner, to substantiate her contention, got examined herself as P.W.1 and examined P. Nagaraju and M. Rama Chandra Reddy as PWs 2 and 3. Apart from relying on the testimony of PWs 2 and 3, she relied on Exs.A1 to A3 to prove her case. On behalf of the second respondent i.e., insurer of the offending tractor R.W.1 was examined and through him the insurance policy of the tractor was marked as Ex.B1.

The Tribunal, on appreciation of the evidence of PWs 2 and 3 and also the documents such as Exs.A1 to A5, came to the opinion that the accident dated 24.1.2005, which resulted in the death of the deceased, was caused due to the negligent driving of the tractor bearing No. KA 36 T 2534 by its driver.

This appeal is filed by the petitioner disputing the quantum of compensation. It is her contention that the compensation awarded to her in respect of death of her father in the accident is not fair and reasonable. It is contended on behalf of the petitioner by her counsel that the Tribunal, instead of applying a multiplier '13', has applied multiplier '8'. It is also contended by her learned counsel that no amount is awarded under the head of loss of future prospects in life. It is also urged by her learned counsel that no amount is awarded under the head of funeral expenditure. A further contention is also raised by her counsel that despite the production pattadar passbook which established the fact that the deceased was holding landed property in his name, no amount is awarded under the head of agriculture income. These are the prime contentions urged by her learned counsel while making his submissions.

I have gone through the award impugned in this appeal. In support of the petitioner's contention that her father was working as a supervisor in Bandarlapalli Market Yard check post and was drawing a monthly salary of Rs.12,000/-, she produced Ex.A6-last pay certificate of the deceased issued by the Secretary Agricultural Market Committee, Kollakuntla. The Tribunal, on close scrutiny of the contents of Ex.A6 last pay certificate of the deceased issued by the Secretary Agricultural Market Committee, Kollakuntla, by deducting 50% of the salary of the deceased towards his personal expenditure, awarded the total compensation of Rs.5,64,700/- under the head of loss of income. The contention of the petitioner is that the Tribunal applied a wrong multiplier '8' and that the multiplier '13' might have been applied by the Tribunal, hence the award passed by the Tribunal in granting compensation to the petitioner under the head of loss of income is minimal and low.

The death of the deceased occurred in the first month of 2005. The claim in respect of death of the deceased was laid in the year 2005, and that the award was passed by the Tribunal in the year 2006. By then the guidelines laid down by the Apex Court in ***Bhagawandas***

***Vs. Mohd. Arif*** [1] were being followed to assess the compensation. By applying multiplier '8' the Tribunal awarded compensation of Rs.5,64,700/- under the head of loss of earnings. It is true that no amount is awarded under the head of funeral expenditure and also under the head of loss of love and affection. The petitioner is the married daughter of the deceased. Though it is contended by her that her deceased father was getting income of Rs.70,000/- per annum through cultivation, she had not filed any other evidence establishing the income of her father through agriculture except the production of Ex.A7-pattadar passbook standing in the name of her father. As no reliable evidence is adduced by her to establish the loss of income of the deceased through cultivation, the Tribunal has rightly not granted any compensation under the head of loss of income through cultivation. However, taking into consideration of the fact that no amount is awarded under the head of loss of 'love and affection' and 'funeral expenditure', this Court is of the view that awarding a sum of Rs.10,000/- under the head of funeral expenditure and Rs.50,000/- under the head of love and affection is just and reasonable. Thus the petitioner is entitled to get total compensation of Rs.5,64,700+10,000+50,000=6,24,700/-.

In the result, the appeal is partly allowed enhancing compensation from 5,64,700/- to Rs.6,24,700/- (Rupees Six Lakhs, Twenty Four Thousands and Seven Hundreds only). The enhanced compensation shall carry interest @ 7.5% per annum from the date of

[1] 1987 (2) ALT 137

claim petition till the date of realization and the same shall be paid by the respondents 1 and 2 jointly and severally. Miscellaneous applications, if any pending, shall stand closed. No costs.

J. UMA DEVI, J

Dt.26.7.2018
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