THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 498 of 2010

JUDGMENT:

Against the award dated 7.1.2009 passed by the Motor Vehicles Accidents Claims Tribunal-cum- District Judge, Guntur in MVOP No. 1002 of 2007 granting compensation of Rs.16.41 lakhs to the petitioners in the aforementioned OP in respect of death of the deceased Pathan Subhan Khan in an accident dated 13.6.2007, the present appeal is filed by the National Insurance Company Limited which has been arrayed as 2nd respondent in the aforementioned OP.

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

The facts of the case are briefly stated as under,

Petitioner No.1 is the wife, petitioners 2 and 3 are the minor children and petitioners 4 and 5 are the parents of the deceased Pathan Subhan Khan who died in an accident dated 13.6.2007. They laid the claim against the appellant/insurance company and owner of Tata Mobile Goods Carrier bearing No. AP 31 X 4590 for compensation of Rs.21.00 lakhs in respect of death of the deceased Pathan Subhan Khan.

Their case as narrated in the claim petition is that on 13.6.2007 at about 4.30 P.M. while the deceased was proceeding towards Vijayawada from Gudavalli on Hero Honda Motor cycle bearing No. AP 16 AN 5136, when he reached near Savarigudem cross roads on

National Highway- 5, a Tata Mobile Goods Carrier bearing No. AP 31 X 4590, belonging to the 1st respondent, came from Eluru side in a rash and negligent manner with high speed and hit his motor cycle. The said accident resulted in grievous injuries to him and he was shifted to Nagarjuna Hospital at Kanuru by the passers-by. After he was provided with first aid, he was shifted to Pinnamaneni Hospital and there while taking treatment he succumbed to injuries on 14.6.2007 at about 10.30 P.M. It is also asserted by the petitioners in their pleadings that the deceased was aged about 31 years by the date of his death. He was working as semi-skilled mechanic in Jasper Industries Private Limited, Gudavalli. He was also working as an advisor to S.B.I. Life Insurance and Agent to PACL India Limited and he was getting Rs.20,000/- per month and was maintaining the petitioners with that income. Due to his sudden demise they lost his love and affection and financial support. Therefore, they laid the claim for compensation of 21.00 lakhs as against the owner of Tata Mobile Goods Carrier bearing No. AP 31 X 4590 and its insurer.

Before the Tribunal the petitioners, to prove their case, examined five witnesses and marked Exs.A1 to A11. P.W.2 in his evidence deposed that on the date of accident at about 4.30 P.M. while the deceased was proceeding on a motor cycle towards Vijayawada near a cross road at Savarigudem, he was hit by a lorry belonging to the 1st respondent, which was driven by its driver in a rash and negligent manner by coming from his behind. In the said accident he received grievous injuries. P.W.2 was the person who was running a tea stall near the cross roads at Kesarapalli village. The Tribunal, having been convinced with the evidence of P.W.2 whose testimony was corroborated on all aspects with the contents of Exs.A1 and A3, came to the opinion that the accident, which was the cause of the death of the deceased, occurred due to the negligent driving of the Tata Mobile Goods Carrier bearing No. AP 31 X 4590 by its driver and accordingly answered the issue framed relating to the negligence attributed to the driver of the crime vehicle.

The claim petition filed by the petitioners was not contested by the owner of the crime vehicle. The appellant/insurance company, though disputed the negligence on the part of driver of the crime vehicle, did not choose to examine a single witness to disprove the evidence given by P.W.2 who was a natural person to speak about the accident that took place in his presence. Upon close scrutiny of the evidence of P.W.2 whose evidence has not been controverted, this Court is of the view that the finding given by the Tribunal regarding negligence attributed to the driver of the crime vehicle in causing the accident which resulted in the death of the deceased, cannot be meddled with.

Coming to the contentions raised by the insurance company disputing the quantification of the compensation is concerned, the petitioners have got examined P.W.3 – P.V.B. Nageswara Rao, a clerk in Jasper Industries Private Limited, Vijayawada to prove that the deceased was working as semi-skilled mechanic in the said company. The salary certificate issued by Jasper Industries Private Limited is marked as Ex.A6. The evidence of P.W.3, the clerk in Jasper Industries Private Limited and Ex.A6, the salary certificate and Ex.A3, the charge sheet copy clinchingly establishes the fact that the deceased was working as semi-skilled mechanic in Jasper Industries Private Limited, Vijayawada prior to his death. The petitioners have examined P.W.4, an Officer in S.B.I. Life Insurance, Guntur to establish that the deceased worked as adviser in SBI Life Insurance prior to his death. They also have examined P.W.5- a cashier in PACL India Limited, Vijayawada where the deceased worked as an agent on commission basis.

The Tribunal, taking note of the contents of Ex.A6 which are established by the petitioners through the evidence of P.W.3, has taken the income earned by the deceased as his salary by working in Jasper Industries Private Limited as a semi-skilled labourer at Rs.3,505/- per month.

Ample evidence is placed on record by the petitioners by examining P.W.4 to prove the income of the deceased as an adviser in SBI Life Insurance. The evidence of P.W.4 is clear to the effect that during the year 2005-2006 the deceased was paid commission of Rs.46,661/- and during the year 2006-2007 he was paid commission of Rs.1,08,113/-. P.W.4 was duly authorized to give evidence before the Tribunal under Ex.X1. In Ex.A9 the income tax returns submitted by the deceased in Form No. 2 (B) his employment as adviser in SBI Life Insurance was stated and as per Ex.A8, he received commission of Rs.46,661/- during the year 2005-2006 and Rs.1,08,113/- during the year 2006-2007. The Tribunal, taking note of the contents of Exs.A6, A8 and A9 and other evidence available in the record, assessed income of the deceased as advisor in SBI Life insurance roughly at Rs.9,000/- per month.

It was deposed by P.W.5, a cashier in PACL India Limited, Vijayawada that the deceased used to work as agent in the said company on commission basis and that he did business to a tune of Rs.24,040/- during the financial year 2006-2007 and Rs.19,885/- during the financial year 2007-2008. As per his evidence, the deceased used to get commission of 15% on the above said business amount. Through P.W.5 the identity card of the deceased and the certificate issued to him by PACL India Limited were exhibited as Exs.A10 and A11 respectively. However, the Tribunal had not treated the income earned by the deceased as commission agent of PACL India Limited as his regular income.

The appellant/insurance company did not choose to adduce any evidence to disprove the evidence of PWs 3 to 5. Though PWs 3 to 5 were cross-examined at length, no information useful to the insurance company was brought in.

The Tribunal, upon close scrutiny of the evidence of P.Ws 3 to 5 wherefrom it is evident that the deceased was getting monthly income of Rs.3,505/- by working as semi-skilled mechanic in Jasper Industries Private Limited, Vijayawada and received commission of Rs.46,661/- during the year 2005-2006 and Rs.1,08,113/- during the year 2006-2007 by working as an adviser in SBI Life Insurance vis-à-vis Ex.A9, the income tax returns where the details of his income through salary and the commission by working as an adviser in SBI Life Insurance are mentioned, assessed his income on average as an advisor of SBI Life Insurance at Rs.9,000/- per month. By adding his monthly salary of Rs.3,505/- by working as semi-skilled labourer in Jaspar Industries to it, the Tribunal assessed his total monthly income at Rs.12,505/-. The annual income of the deceased thus would come to Rs.1,50,060/- The annual loss income contribution of the deceased towards his family comes to Rs.1,00,040/- if 1/3rd of his annual income is deducted to his personal expenditure. As the deceased was aged about 31 years by the date of his death, the Tribunal assessed total loss of income contribution of the deceased towards his family at Rs.16,00,640/- on a multiplier '16' and awarded the said amount accordingly under the head of loss of income contribution of the deceased to his family. The award impugned in the appeal would indicate that Rs.15,000/- was awarded towards loss of estate and Rs.10,000/- towards medical expenses, transportation charges and funeral charges. It also indicates that Rs.15,000/- is awarded to the 1st petitioner towards consortium.

On close scrutiny of the evidence on record and the award impugned in the present appeal, this Court finds that reasonable compensation is awarded to the petitioners in respect of the death of the deceased.

Though the insurance company has come with the plea that the income of the deceased as adviser in SBI life insurance ought to have been taken by the Tribunal at Rs.5,000/- per month, instead of Rs.9,000/-, it failed to convince the Court that on what basis the income of the deceased as an advisor of SBI life insurance is to be taken. As the evidence is there on record as to the working of the deceased as semi-skilled mechanic in Jasper industries private limited and as advisor in SBI life insurance, the Tribunal cannot be faulted in assessing the income of the deceased as Rs.12,505/- per month and in granting compensation of Rs.16,41,000/-. I find no merit in the contention of the appellant/insurance company that the compensation awarded to the claimants is excessive. As the amount of compensation awarded to the claimants appears to be fair and reasonable, there cannot be hesitation for me to hold that the Tribunal has not committed any error in granting compensation of Rs.16,41,000/- to the claimants as against the appellant/insurance company together with interest @ 7% per annum from the date of filing of the claim petition till realization and costs thereon along with the owner of the crime vehicle.

In the light of my above held discussion, the appeal filed by the insurance company deserves to be dismissed and the same is accordingly dismissed confirming the award dated 7.1.2009 in MVOP No. 1002 of 2007 on the file of the Motor Vehicles Accidents Claims Tribunal-cum- District Judge, Guntur.

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

JUSTICE J. UMA DEVI

Dt.12.12.2018
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