THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2175 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 10.11.2003 passed in M.V.O.P. No.104 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal (for short, 'the Tribunal'), whereby the Tribunal granted Rs.1,80,000/- with interest at 9% per annum as compensation in favour of the appellants, as against the claim of Rs.2,50,000/- for the death of Mulla Basubee in a motor accident occurred on 19.12.2002. The appellants are the husband and children of the deceased-Mulla Basubee.

2. Heard the learned counsel for the appellants-claimants and perused the material on record. It is mentioned in the appeal that the 1st respondent-owner of the offending vehicle is not necessary party in this appeal. Though notice was served on the 2nd respondent-insurer long back, none entered appearance on its behalf. In view of the same, this appeal can be disposed of basing on the material available on record.

3. Learned counsel for the appellants-claimants would contend that the Tribunal had granted meagre amount of compensation, though the claim was made for Rs.2,50,000/-; the Tribunal ought to have taken the monthly earnings of the deceased at Rs.5,000/-; and ultimately, prayed to enhance the compensation as claimed.

4. There is no dispute with regard to the death of the deceased-Mulla Basubee in a motor accident occurred on 19.12.2002 due to the rash and negligent driving of the driver of the tractor bearing registration No.AP 21H 2930. The contention of the appellants-claimants is that the deceased was earning Rs.5,000/- per month and they were all the dependents on the deceased. To substantiate the contentions, the appellants examined P.Ws.1 and 2 and got

marked Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of inquest report, Ex.A.3-certified copy of post-mortem examination certificate and Ex.A.4-certified copy of charge sheet. On behalf of the 2nd respondent-insurer, Ex.B.1-copy of insurance policy of the offending vehicle was marked.

5. The Tribunal had taken the annual income of the deceased at Rs.14,400/-, deducted 1/3rd therefrom towards personal expenses of the deceased and taken the reminder of Rs.9,600/- as the loss of income due to death of the deceased. The Tribunal by taking multiplier ‘17’, assessed the loss of dependency at Rs.1,63,200/- (Rs.9,600/- x 17) and awarded the same. The Tribunal also awarded Rs.10,000/- towards loss of consortium, Rs.800/- towards funeral expenses and Rs.6,000/- towards loss of love and affection. In all, the Tribunal granted Rs.1,80,000/- as compensation.

6. As per the material on record, the deceased was 23 years old. Though it is contended by the appellants that the deceased was doing milk vending business, there is no record to substantiate the same. The accident and death occurred on 19.12.2002. In view of the same, the loss of annual income to the appellants due to the death of the deceased can be taken as Rs.10,000/- after deducting the personal expenses of the deceased. The suitable multiplier for the age of the deceased is ‘17’. So, the loss of dependency would come to Rs.1,70,000/- (Rs.10,000/- x 17).

7. It is apt to refer to the recent decision of the Apex Court in **National Insurance Co. Ltd., Vs. Pranay Sethi and others**[1], wherein, it was held as follows:-

> **“Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The**

[1] 2017 (6) ALD 170 (SC)

aforesaid amounts should be enhanced at the rate of 10% in every three years."

Taking into consideration the aforementioned decision of the Apex Court, this Court is inclined to grant Rs.40,000/- to the 1st appellant/1st claimant (husband) towards loss of consortium, Rs.15,000/- to the appellants-claimants towards loss of estate and another Rs.15,000/- towards funeral expenses. Thus, the appellants-claimants are entitled for a total compensation of Rs.2,40,000/- (Rupees two lakhs and forty thousand only) (Rs.1,70,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-). The Tribunal awarded interest at the rate of 9% per annum on the amount granted as compensation from the date of petition till date of deposit. As per the settled legal position, the appellants-claimants are entitled for interest at the rate of 7.5% per annum only on the enhanced amount of compensation.

8. In the result, this appeal is partly allowed and the order dated 10.11.2003 passed by the Tribunal in M.V.O.P. No.104 of 2003 is modified and the amount of compensation of Rs.1,80,000/- granted by the Tribunal is enhanced to Rs.2,40,000/-. The appellants-claimants are entitled to interest at 7.5% per annum on the enhanced amount of Rs.60,000/- from the date of petition till date of deposit. The appellants-claimants are entitled to share the enhanced compensation equally and they are permitted to withdraw their entire amounts.

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

Dr. SHAMEEM AKTHER, J

Date: 27.06.2018
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