THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3194 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 17.08.2005 in O.P.No.272 of 2002 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Prakasam at Ongole (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-Insurance Company and perused the record. The appeal against respondent No.3-owner was dismissed for default on 08.02.2016. No representation for respondents 1 and 2-claimants. This appeal is of the year 2005. Hence, it can be disposed of on merits.

3. Learned counsel for the appellant-Insurance Company would contend that the deceased was responsible for the occurrence of accident. The Tribunal had taken the monthly income of the deceased as Rs.9,000/- and assessed the compensation at Rs.10,66,500/-, which is excessive. The Tribunal ought to have taken Rs.7,000/- as monthly income of the deceased and 50% has to be deducted for the negligence on the part of the deceased and ultimately prayed to reduce the compensation.

4. In view of the submissions, the points that arise for determination are:-

1. Whether the Tribunal is justified in apportionment of 10% negligence on the part of the deceased?
2. Whether the Tribunal is justified in taking Rs.9,000/- as monthly income of the deceased in assessing the compensation?

5. The death of deceased K.Srinivasa Rao in a road accident that occurred on 31.12.2001 is not in dispute. Merely because there were no zebra lines, where the deceased was crossing the road, the Tribunal held that there was 10% negligence on the part of the deceased and deducted the compensation to that extent. There is no error by the Tribunal with regard to this finding. In the circumstances, 50% apportionment cannot be taken as contended on behalf of the appellant.

6. Ex.A6-salary certificate of the deceased shows that he was drawing monthly salary of Rs.7,620/- by working as Chemist. To substantiate the same, the General Manager, Personal Administration of Divi Laboratories, Hyderabad, was examined as P.W.2, who deposed that the deceased was drawing a salary of Rs.8,000/- per month. The Tribunal having regard to his future prospects, took the salary of the deceased as Rs.9,000/- per month, deducted 1/3rd of the same, applied multiplier '16' and assessed the compensation payable at Rs.11,52,000/- towards loss of earnings to the dependants and also granted Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.3,000/- towards funeral expenses. The total compensation comes to Rs.11,85,000/-. After deducting 10% contributory negligence on

the part of the deceased, the Tribunal granted total compensation of Rs.10,66,500/- with interest @ 7.5% per annum from the date of petition till the date of realisation.

7. Grant of compensation of Rs.10,66,500/- with interest @ 7.5% per annum is sustainable. Hence, this Court is of the view that no interference is required in the order under challenge. The appeal is devoid of merit and is liable to be dismissed.

8. The appeal is dismissed accordingly.

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

Dr. SHAMEEM AKTHER, J

Date: 16.07.2018
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