THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1587 of 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellants-claimants aggrieved by the order dated 25.03.2005 in M.V.O.P.No.114 of 2002 on the file of the Motor Accident Claims Tribunal-cum-V Additional District Judge, Chittoor at Tirupati (for short 'the Tribunal').

2. Heard the learned counsel for appellants-claimants, the learned Standing Counsel for respondent No.2-Insurance Company and perused the record. The appeal against respondent No.1 was dismissed for default on 17.11.2017.

3. Learned counsel for the appellants-claimants would contend that the compensation granted by the Tribunal is meagre. The deceased was a mason and earning Rs.130/- per day, but the Tribunal has taken the income of the deceased at Rs.50/- per day, which is erroneous. There is evidence of P.W.4 to substantiate that the deceased was earning Rs.130/- per day. No future hike in the income of the deceased was taken and ultimately, prayed to enhance the compensation.

4. On the other hand, learned Standing Counsel for the respondent-Insurance Company would contend that there is no evidence to believe that the deceased was a mason. The Tribunal has rightly took the income of the deceased at Rs.50/- per day in granting the compensation. There are no

circumstances to enhance the compensation and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the only point that arises for determination is, whether the appellants-claimants are entitled for enhancement of compensation?

6. There is no dispute with regard to the death of the deceased-Challaiah and nature of the accident that occurred on 01.09.2001 due to the rash and negligent driving of the driver of lorry bearing No.TN 23/X 3666. The only dispute is with regard to assessment and award of compensation.

7. Though the learned counsel for the claimants contended that the deceased was a mason and earning Rs.130/- per day, there is no legally acceptable evidence to that effect. In the circumstances of the case, it can be held that the deceased was an earning member and the claimants are the dependents on him. The Tribunal held that the deceased was a cooli and assessed the compensation by taking his income at Rs.50/- per day, which is justified, but some future hike in the income of the deceased is required to be taken depending upon the circumstances of the case. So, daily income of the deceased including future hike can be taken as Rs.75/-, which comes to Rs.2,250/- per month and annual income comes to Rs.27,000/-. Since there are three dependents, 1/3rd has to be deducted towards personal expenses of the deceased. After deducting 1/3rd thereof towards his personal expenses, the net contribution to his family comes to Rs.18,000/-. The suitable multiplier for

the age (40) of the deceased as per the decision of the Apex Court in *Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another*[1], is '15'. After applying the multiplier of '15', the loss of dependency comes to Rs.2,70,000/-. The appellants-claimants are entitled for the said amount towards loss of dependency.

8. Further, as per the decision of the Apex Court in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*[2], the 1st claimant/wife of the deceased is entitled for a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. In total, the appellants-claimants are entitled for compensation of Rs.3,40,000/- (Rs.2,70,000/- + Rs.70,000/-) with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit.

9. In the result, the appeal is partly allowed modifying the order, dated 25.03.2005, passed by the Tribunal in M.V.O.P.No.114 of 2002 enhancing the compensation from Rs.2,16,000/- to Rs.3,40,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. Out of enhanced compensation, 1st claimant/wife is entitled to 50% of the same. Insofar as the remaining 50% of the enhanced amount is concerned, all the other claimants are entitled to share it equally. The other directions in the impugned order remain unaltered. The appellants-claimants are permitted to withdraw the entire

[1] 2009 (6) SCC 121
[2] 2017 (6) ALD 170 (SC)

amount with interest as per the aforesaid apportionment of their shares.

The Miscellaneous petitions, if any, pending shall stand closed. No costs.

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Dr. SHAMEEM AKTHER, J

Date: 07.08.2018
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