

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1882 OF 2010

JUDGMENT:

Against the award, dated 07.12.2009 passed in O.P.No.333 of 2006 by the Addl. Chairman, Accidents Claims Tribunal-cum-XX Addl. Chief Judge, City Civil Court, Secunderabad, the present appeal is filed by the claimant in the above mentioned O.P.

2. The parties hereinafter will be referred to as they were arrayed in the trial Court in the above mentioned O.P.

3. The petitioners are the wife and children of the deceased-Pannalal Kagade, who died in the road accident, dated 20.05.2006. It is asserted by the petitioners that on 20.05.2006 at about 7 A.M., while the deceased was proceeding towards Gandhinagar from Valmikinagar on a motor cycle, the motor cycle driven by him on left side of the road, he was hit by a Qualis vehicle bearing No. AP 9X 7104, which came from his behind in a rash and negligent manner and the right wheel of the Qualis vehicle bearing No. AP 9X 7104 ran over his body and thus he died on the spot itself. The petitioners laid the claim for compensation of Rs.12,65,000/- against the driver and insurer of the Qualis vehicle bearing No. AP 9X 7104, due to negligent driving of which by the 1st respondent, instantaneous death of the deceased took place.

The petitioners further asserted that the deceased was aged about 42 years by the date of his death in the accident, and was working in the office of M.L.Prasad Rao, a proprietor of two factories and was getting monthly salary of Rs.7,700/-. It was also their contention that the deceased was doing Real Estate business also and was getting income of Rs.20,000/- to Rs.25,000/- per month apart from getting salary of Rs.7,700/- per month by working in the office of M.L.Prasad Rao.

The main contention of the petitioners was that the Court below ignoring Ex.A18-salary certificate, which they proved by examining P.W.2, wrongly assessed the income of the deceased at Rs.6,000/- per month. Their further contention was that the evidence given by P.W.4, in respect of the income of the deceased through plot business was rejected without recording any valid reasons. Their contention was that as the evidence of P.Ws. 2 and 4 was not taken into consideration, they could not get fair and reasonable compensation, therefore, they approached this Court by preferring the present appeal seeking to set aside the award of the Court below and pass appropriate order granting fair and reasonable compensation to them.

4. The driver and owner of the vehicle involved in the accident remained ex parte. The Insurance Company, with whom the crime vehicle was insured, alone contested their claim laid for compensation.

5. The petitioners to substantiate their contention, examined four witnesses. P.W.1-Sandhya P.Kagade the wife of the deceased was not the eye witness of the accident. The Court below relying on the evidence of P.W.3-T.Prakash Chouhan, deposed that the accident in question occurred due to negligent driving of the Qualis vehicle bearing No. AP 9X 7104, which came behind the motor cycle of the deceased and gave a hit to it and as the result of it, the deceased fell down and died on the spot. As the above evidence of P.W.3 was convincing and was corroborating on all aspects with Exs.A1 to A3, the Court below recorded a finding that due to the negligent driving of Qualis vehicle bearing No. AP 9X 7104 by the 1st respondent, the death of the deceased took place.

6. The petitioners to prove their contention that the deceased was getting salary of Rs.7,700/- per month by working in the office of M.L.Prasad Rao, who was the proprietor of two factories, examined P.Ws. 2 and 4. As the petitioners failed to prove Ex.A1-salary certificate by examining the person who issued it, the Court below had rightly ignored it. The trial Court on appreciation of evidence of P.W.2, who deposed that the deceased was working as a driver, had rightly disbelieved the testimony of P.W.4, who stated that the deceased was getting commission of Rs.10,000/- per month by doing plot business. As the author of Ex.A18-salary certificate was not examined, the Court below on considering the fact that the

deceased was working as driver under P.W.2, assessed his income roughly at Rs.6,000/- per month. As the deceased was 45 years old by the date of his death as found from the contents of post-mortem report and the inquest report, the Court below had applied multiplier 13. Accordingly, it computed the compensation under the head of loss of income contribution to his family at Rs.6,24,000/-. The Court below while granting compensation to the petitioners had failed to appreciate that 1st petitioner lost the company of her husband while she was at the age of 36 years. The Court below ought to have awarded compensation of Rs.25,000/- under the head of consortium. As, the compensation awarded under the head of consortium appeared to be very low and meager and the same is enhanced to Rs.25,000/- from Rs.15,000/-. As it is felt that the compensation awarded under the head of loss of love and affection appears to be very low and meager, the same is enhanced to Rs.20,000/- from Rs.10,000/-. As the amount awarded under the head of funeral expenditure appears to be low, the same is enhanced to Rs.6,000/- from Rs.2,000/-.

7. In the light of aforementioned discussion, compensation under the head of consortium is enhanced to Rs.25,000/- from Rs.15,000/-, under the head of loss of love and affection to Rs.20,000/- from Rs.10,000/- and under the head of funeral expenditure to Rs.6,000/- from Rs.2,000/-. The petitioners thus are entitled to get compensation of

Rs.6,75,000/- as against Rs.6,52,000/- (which has been awarded by the Court below). As the interest awarded appears to be low, the same is enhanced to 7.5% p.a. from 6% p.a..

8. Accordingly, this appeal is partly allowed with proportionate costs. The petitioners-claimants are entitled to get compensation of Rs.6,75,000/-, and the same is payable by the owner and insurer of the Qualis vehicle bearing No. AP 9X 7104 together with interest at 7.5% p.a., from the date of petition till the date of realization.

9. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

DATED: 25-07-2018.
Hsd

J.UMA DEVI, J

