THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2490 OF 2007

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 08.03.2007 in O.P.No.1228 of 2004 on the file of the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-Insurance Company and the learned counsel for respondents-claimants and perused the record.

3. Learned Standing Counsel for the appellant-Insurance Company would contend that the Tribunal had erroneously taken the monthly income of the deceased as Rs.18,000/-. There are no income-tax returns. The Tribunal disbelieved the employment of the deceased-Deepak Raj Mathur which was covered under Exs.A26 to A28. The Tribunal by applying the wrong multiplier, granted excess compensation and ultimately, prayed to set aside the impugned order passed against the Insurance Company.

4. On the other hand, the learned counsel for the respondents-claimants would contend that the Tribunal had rightly assessed the income of the deceased at Rs.18,000/- per month and granted the compensation. The Tribunal had granted meagre compensation towards conventional heads and ultimately, prayed to enhance the same.

5. In view of the submissions made by both sides counsel, the points that arise for determination are as follows:-

> 1) Whether the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP-02-U-0469 or whether there was contributory negligence on the part of the rider of the scooter bearing No.DDK-238?
>
> 2) Whether the Tribunal justified in granting the compensation at Rs.18,81,500/- with interest @ 7.5% per annum?
>
> 3) Whether the impugned order is liable to be set aside?

6. POINT No.1:- The Tribunal relied on the evidence of P.W.1-wife of the deceased and the evidence of P.W.2, who is said to be the eye witness, and held that the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP-02-U-0469. Ex.A1 is the copy of complaint. Ex.A2 is the copy of FIR, Ex.A3 is the copy of charge sheet and Ex.A4 is the copy of post-mortem report of the deceased. All these documents clinchingly establish that the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP-02-U-0469. There is no reason for the investigating officer to prepare false reports under Exs.A1 to A4. The evidence of P.W.2 also clearly establishes that the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP-02-U-0469. Under these circumstances, there is justification in the finding of the Tribunal that the driver of the lorry bearing No.AP-02-U-0469 was responsible for the occurrence of accident and death of the deceased. There is nothing to take a different view. Point No.1 is answered in favour of the claimants.

7. POINT Nos.2 and 3:- The evidence of P.W.1 and other witnesses is that the deceased was 46 years old and was getting

income of Rs.30,000/- per month from number of sources. There is evidence of P.Ws.3 and 4 with regard to the nature of the employment undertaken by the deceased during his lifetime. According to them, the deceased was a great Scholar and Geologist. There are also certificates marked as Exs.A12 to A32 in the correspondence made between the deceased and other organisations. Ex.A15 reveals that he obtained the original certificate of decree of Bachelor of Science from Osmania University, Ex.A16 reveals that the deceased obtained Master of Science Decree from University of Poona, Ex.A17 reveals that the deceased obtained Doctor of Philosophy (Ph.D.) from Poona, Ex.A18 is the letter of appreciation from Maharashtra Association for the Cultivation of Science, Ex.A19 is the certificate of service from the Andhra Pradesh State Irrigation Development Corporation Limited, Ex.A20 is the relief orders and Ex.A21 is the salary certificate. The certificates and the documents marked on behalf of the claimants would show that the deceased was highly qualified and obtained Doctor of Philosophy. He was undertaking survey and other works with different organisations. He was also co-author with P.W.3 in writing "The Pillars of Divine Wisdom". Considering the same, the Tribunal assessed the income of the deceased at Rs.18,000/- per month.

8. In view of the decision rendered in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*[1], some hike is required to be taken in the monthly income of the deceased and Rs.70,000/- is required to be awarded towards conventional heads. Considering the totality of the circumstances of the case, the Tribunal taking the

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

monthly income of the deceased at Rs.18,000/-, deducting 1/3rd thereof towards his personal expenses, applying the multiplier '13' and granting compensation of Rs.18,81,500/- with interest @ 7.5% per annum cannot be held excessive. There is justification on the part of the Tribunal in granting the said amount. There are no circumstances to vary the impugned order. Point Nos.2 and 3 are answered accordingly.

9. In view of the above discussion, the appeal is dismissed.

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

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Dr. SHAMEEM AKTHER, J

Date: 10.09.2018
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