

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.3275 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 09.09.2005 in M.V.O.P.No.278 of 2004 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Nellore (for short 'the Tribunal'), which was disposed of by way of common order along with M.V.O.P.No.279 of 2004.

2. Heard the learned counsel for appellants-claimants, the learned Standing Counsel for 2nd respondent-Insurance Company and perused the record. There is no representation for 1st respondent-owner.

3. The learned counsel for appellants-claimants would contend that the Tribunal granted compensation of Rs.1,75,000/- against the claim of Rs.4,00,000/-. The deceased was a milk vendor and he was aged 40 years. The Tribunal took his monthly income as Rs.1,200/-, which is meagre. The Tribunal granted meagre compensation and ultimately, prayed to enhance the same.

4. Learned Standing Counsel for the respondent-Insurance Company would contend that as there was no proof of appointment, the Tribunal had taken the monthly income of the deceased as Rs.1,200/- and rightly granted the said compensation. There are no circumstances to enhance the same and ultimately, prayed to dismiss the appeal.

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

6. There is no dispute with regard to the death of the deceased-Govardhan in a motor accident that occurred on 15.11.2003 due to the rash and negligent driving of the driver of lorry bearing No.AP03/U-1071. The only dispute is with regard to the enhancement of compensation.

7. As per the criminal case record and the evidence of P.W.1-wife of the deceased, the deceased was a milk vendor and he was 40 years old on the date of occurrence of accident. The Tribunal took his monthly salary as Rs.1,200/-, applied multiplier '15' and assessed the loss of dependency at Rs.1,44,000/-. The Tribunal assessed and awarded some more amount towards pecuniary damages and loss of consortium to the appellants and totally granted compensation of Rs.1,75,000/-.

8. As the deceased was an earning member and supporting his family by doing milk vending business, his monthly income can be taken as Rs.2,500/-, which comes to Rs.30,000/- per annum. Since there are three dependants, 1/3rd thereof is liable to be deducted towards his personal expenses, which comes to Rs.20,000/-. After applying multiplier '15', the loss of dependency comes to Rs.3,00,000/-.

9. Further, as per the decision of the Apex Court in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*¹, the appellant No.1-wife is entitled for a sum of Rs.40,000/-

¹ 2017 (6) ALD 170 (SC)

towards loss of consortium and appellant Nos.1 to 3 are entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate and the same are accordingly awarded. In total, the appellants-claimants are entitled for a compensation of Rs.3,70,000/- (Rs.3,00,000/- + Rs.70,000/-) with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit.

10. In the result, the appeal is partly allowed modifying the order, dated 09.09.2005, passed by the Tribunal in O.P.No.278 of 2004 enhancing the compensation from Rs.1,75,000/- to Rs.3,70,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. On such deposit, 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 terms of impugned order remain unaltered. On deposit, the appellants-claimants are permitted to withdraw the entire amount with interest as per the aforesaid apportionment of their shares.

The Miscellaneous Petitions, if any, pending shall stand closed.

Dr. SHAMEEM AKTHER, J

Date : 24.09.2018
ssp