HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.451 OF 2006

JUDGMENT:

This appeal is preferred by the petitioners in O.P.No.448 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge at Warangal (*for short, 'the Tribunal'*), dissatisfied with the award dated 28.11.2005 granting a sum of Rs.1,91,000/- towards compensation out of claim of Rs.4,50,000/- claimed by the petitioners under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), attributing contributory negligence to the extent of 50% to the deceased and the remaining 50% to the driver of the Auto Rikshaw bearing No. AP 36 U 1529 of the 1st respondent.

2. The appellants herein are the petitioners before the Tribunal, while the respondent Nos.1 and 2, are the owner and insurer of the Auto Rikshaw bearing No.AP 36U 1529 (*for short 'offending vehicle)*, respectively and respondents 3 and 4 are the parents of the deceased.

3. Basing on the pleadings, the Tribunal framed three issues and during enquiry, on behalf of the petitioners/appellants three witnesses were examined and Exs.A1 to A8 were marked. The respondents did not adduce any evidence in defence.

4. The Tribunal, on Issue No.1, basing on Ex.A3-P.M.E report, wherein it is stated that the stomach of the deceased

was containing partly digested food material mixed with about 200 ml. of brown coloured fluid with a smell of alcohol, held that the deceased was riding his bicycle by consuming alcohol; and that the accident took place due to contributory negligence on the part of deceased and also driver of the offending vehicle of the 1st respondent and thereby cast 50% of contributory negligence to the driver of the offending vehicle and the remaining 50% to the deceased.

5. On issue No.2, the Tribunal, on appraisal of evidence, arrived at the income of the deceased as Rs.2,500/- per month i.e. Rs.30,000/- per annum, having deducted 1/3rd towards personal expenses (30,000 x 1/3=10,000) worked out the annual income at Rs.20,000/- as contribution of the deceased towards his family members, and taking the multiplier '18' awarded an amount of Rs.3,60,000/- (Rs.20,000- x multiplier '18') besides awarding Rs.2,000/- towards funeral expenses and Rs.10,000/- towards loss of estate and Rs.10,000/- as loss of consortium, awarded a total amount of Rs.3,82,000/- as compensation.

6. While deciding Issue No.1, since 50% of the negligence is attributed to the deceased, the Tribunal awarded only Rs.1,91,000/- to the petitioners as well as respondent No.3 (father of the deceased), payable by respondents 1 and 2 jointly and severally with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization.

7. Dissatisfied with the award of compensation granted by the Tribunal, the petitioners, who are the legal heirs of the deceased, preferred the instant appeal.

8. Heard learned counsel for the appellants and learned Standing Counsel for 2nd respondent-United India Insurance Company Limited.

9. Learned counsel for the appellants submits that without any basis, the Tribunal has held that there is contributory negligence on the part of the deceased basing on Ex.A3-Post Mortem Examination Report, wherein it is stated that there was suspicion that the deceased was in drunken state. He also submits that even as per Post Mortem Examination Report, the brown coloured liquid which is found in the stomach of the deceased was having smell of Alcohol, was only a suspicion; and that basing on such suspicion the Court below would not have come to a conclusion that the deceased was in drunken state. More so, what is the percentage of Alcohol consumed by the deceased and whether it is consumed within permissible limit or otherwise is not mentioned. As such, attributing 50% contributory negligence to the deceased and thereby reducing compensation to 50% is erroneous. He also relied on the Judgment in ***Bachubhai Hassanalli Karyani v. State of Maharashtra***[1]**.**

[1] 1971(3) Supreme Court Cases 930

10. He also submits that as per the Judgment reported in ***Shiv Kumar M v. Managing Director, Bengaluru Metropolitan Transport Corporation*** [2] an amount of Rs.70,000/- should be granted under conventional heads, but the Court below granted only Rs.22,000/- towards funeral expenses, loss of estate and loss of consortium.

11. On the other hand learned counsel for 2nd respondent submits that as per Ex.A3-Post Mortem Examination Report, it is clear that the deceased was in drunken state at the time of accident while riding bicycle.

12. In this case it is to be seen that though it is stated in Ex.A3-Post Mortem Examination Report, that the brown coloured liquid which is found in the stomach of the deceased was having smell of Alcohol, it is only suspicion. It is not specifically stated that it is Alcohol and it is also not clear that the deceased has taken alcohol in excess of the permissible limits as prescribed in the Motor Vehicle Act, 1988. The finding of the Tribunal appears to be on mere assumptions. In view of the same this Court feels that attributing 25% negligence is proper instead of 50%.

13. In view of the law laid down by the Hon'ble Supreme Court in ***Shiv Kumar's case (supra 2)*** the petitioners are entitled to a sum of Rs.70,000/- towards conventional heads i.e. funeral expenses, loss of estate and loss of consortium.

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[2] 2017 (5) SCC 79

14. In view of the aforesaid facts and circumstances, since this Court feels attributing 25% of negligence to the deceased is proper, the total amount of compensation for which the petitioners entitled comes to Rs.2,86,500/- (3,82,000-25%). Since the Tribunal awarded only Rs.22,000/- towards conventional heads; and since this Court feels that granting Rs.77,000/- towards conventions heads is proper, remaining amount of Rs.48,000/- (70,000-22,000) can be granted to the petitioners. Thus, the petitioners are entitled to a total compensation of Rs.3,34,500/- (2,86,500 + 48,000).

15. Accordingly, the MACMA is partly allowed granting compensation of Rs.3,34,500/- as against Rs.1,91,000/-, awarded by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

23.02.2018
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