THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2775 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 11.07.2005 in O.P. No.417 of 2003 on the file of the Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad (for short, 'the Tribunal'), seeking enhancement of compensation awarded by the Tribunal.

2. Heard both sides and perused the record.

3. Learned counsel for the appellants would submit that the deceased was aged 21 years working as a Supervisor under the owner of lorry and was drawing salary of Rs.5,000/- per month; Ex.A4 is the salary certificate issued by P.W.2; that P.W.2 categorically stated that the deceased was working as a Supervisor in his transport and earning Rs.5,000/- per month, but the Tribunal had taken monthly income of the deceased as Rs.2,000/- and granted Rs.2,40,000/- towards loss of dependency, and another Rs.30,000/- towards other heads, in total Rs.2,70,000/-, with interest @ 6% per annum, which is unjust, and ultimately prayed to enhance the same.

4. On the other hand, the learned standing counsel for the respondent/insurance company would contend that the Tribunal had dealt with the subject matter elaborately assigning reasons, taken all the factors into consideration and granted just and reasonable compensation. The findings of the Tribunal are based on evidence on record and ultimately prayed to dismiss the appeal.

5. In view of the rival submissions, the point that arises for consideration is whether there are any grounds to enhance the compensation granted by the Tribunal ?

6. Death of the deceased B.Jayasimha Reddy in a road accident that occurred on 09.12.2002 due to rash and negligent driving of driver of Tipper bearing registration No.AP5X 4511, which is owned by respondent No.1 and insured with respondent No.2, is not in dispute. The only dispute is with regard to quantum of compensation granted by the Tribunal.

7. There is oral evidence of P.W.1 and Ex.A3-post mortem examination report, to show that the deceased was aged 21 years as on the date of the accident. P.W.1 is father of the deceased. There is evidence of P.W.2-owner of Durga Lorry Service to the effect that the deceased was working with him as a Supervisor and getting salary of Rs.5,000/- per month apart from travelling allowances. There is also evidence to show that the deceased was contributing the amount to his parents. The deceased was a bachelor. The Tribunal did not consider the salary certificate Ex.A4 filed by the claimants. It is also stated that the deceased failed Intermediate. It is quite natural for a boy of 21 years to work and make some money. However, the earning capacity as on the date of the accident has to be taken into consideration to assess the income. Income @ Rs.5,000/- per month for a boy of 21 years, who failed Intermediate, in those days is on higher side. So, monthly income of the deceased can be taken as Rs.3,000/- and an amount of Rs.500/- can be added towards future hike in salary. Therefore, total monthly income of the deceased can be assessed at Rs.3,500/-. Since the deceased is a bachelor, half of the said amount has to be deducted towards personal expenses of the deceased. If

that is so, the contribution of the deceased to the claimants comes to Rs.1,750/- per month. In a decision rendered in ***Munnalal Jain and others v. Vipin Kumar Sharma and others***[1]**,** in case of death of a bachelor, the Apex Court has taken the age of the deceased to assess the loss of dependency. As per the decision in ***Sarla Verma v. Delhi Transport Corporation***[2], the appropriate multiplier to the age of the deceased is '18'. Therefore, compensation for loss of dependency comes to Rs.1,750/-x 12 x 18 = Rs.3,78,000/-.

8. Placing reliance on the decision in National Insurance Co. Ltd., Vs. Pranay Sethi and others[3], the claimants are awarded a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. In all, the claimants are entitled to compensation of Rs.4,08,000/-.

9. The Tribunal awarded interest at the rate of 6% per annum on the amount of compensation from the date of petition till the date of deposit. Having regard to the facts and circumstances of the case, this Court is inclined to grant interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till realisation.

10. Accordingly, the appeal is allowed in part modifying the order, dated 11.07.2005 in O.P. No.417 of 2003 passed by the Tribunal enhancing the compensation from Rs.2,70,000/- to Rs.4,08,000/- with interest @ 7.5% per annum from the date of petition till the date of realisation. The appellants-claimants are entitled to share the compensation amount equally. On deposit, the appellants-claimants are entitled to

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[1] 2015(6) SCC 347
[2] AIR 2009 SC 3104
[3] 2017 (6) ALD 170 (SC)

withdraw their respective shares. There shall be no order as to costs of the appeal.

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

Dr.SHAMEEM AKTHER, J

02.07.2018
DRK

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2775 OF 2005

16.07.2018

DRK