THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2560 of 2005

JUDGMENT:

Aggrieved by the grant of compensation of Rs.1,30,000/- as against a claim of Rs.2,00,000/- vide order, dated 28.02.2005, passed in O.P.No.103 of 2001 by the Motor Accident Claims Tribunal-cum-II Additional District Judge, Mahabubnagar ('the Tribunal', for brevity), the claimants preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) seeking enhancement of compensation.

2. Heard the learned counsel for the appellants-claimants and perused the record. Despite listing this matter under the caption "For Orders", there is no representation for the 2nd respondent-Insurance Company. The appeal against respondent No.1-owner of the offending jeep bearing registration No.AP-22-B-305 was dismissed for default on 05.01.2012. However, dismissal of the appeal for default against respondent No.1-owner of the offending vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others[1], wherein it is held that:

> "If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be

[1] 2001(1) ALT 495 (D.B.)

> any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

3. The learned counsel for the appellants-claimants would contend that the deceased was 35 years old as on the date of the subject accident and he was an agriculturist. He was earning Rs.10,000/- per month. The Tribunal granted a meagre compensation of Rs.1,30,000/- as against a claim of Rs.2,00,000/- and ultimately prayed to enhance the compensation as claimed.

4. It is not in dispute that the deceased-Samya died in the subject accident occurred on 05.10.2000, due to rash and negligent driving of the driver of the jeep bearing registration No.AP-22-B-305. The only point that arises for determination in this appeal is whether the appellants-claimants are entitled for enhancement of compensation as claimed.

5. As per the evidence on record, the deceased was 35 years old as on the date of the subject accident and he was an agriculturist. The Tribunal assessed the annual income of the deceased as Rs.15,000/-, deducted 1/3rd of the same towards personal expenditure of the deceased, applied multiplier '16', and accordingly granted a compensation of Rs.1,30,000/- with interest @ 9% per annum from the date of the petition till realisation. Since the subject accident occurred on 05.10.2000, the earning capabilities of the persons in those days are required to be taken into consideration. Taking the annual agricultural income of the deceased as Rs.15,000/-

by the Tribunal is just and reasonable. Since there are four dependants on the deceased, 1/4th of the income is liable to be deducted towards personal expenses of the deceased, instead of 1/3rd as deducted by the Tribunal, to assess compensation for loss of dependency. So, the annual loss of dependency would come to Rs.11,250/- (Rs.15,000/- minus 1/4th of the same). As per the judgment of the Apex court in case between Sarla Verma v. Delhi Transport Corporation[2], the appropriate multiplier applicable to the age of the deceased (35 years) is '16'. Thus, the total loss of dependency would come to Rs.1,80,000/- (Rs.11,250/- x 16). Further, the 1st appellant-1st claimant (wife of the deceased) is entitled for Rs.10,000/- towards loss of consortium and the appellants-claimants are entitled for Rs.10,000/- towards loss of estate and funeral expenses. In all, the appellants-claimants are entitled for a compensation of Rs.2,00,000/- (Rs.1,80,000/- + Rs.10,000/- + Rs.10,000/-) as claimed. The Tribunal granted interest @ 9% per annum on the amount granted as compensation from the date of petition till realisation. This Court is inclined to grant interest @ 7.5% per annum on the enhanced amount of compensation from the date of petition till realisation.

6. Accordingly, the appeal is allowed, modifying the order, dated 28.02.2005, passed in O.P.No.103 of 2001 by the Tribunal, enhancing the compensation payable to the appellant-claimant from Rs.1,30,000/- to Rs.2,00,000/- as claimed. The enhanced amount of compensation carries interest @ 7.5% per annum from the date of petition till realisation. The 1st appellant-1st claimant is entitled for 50% of the enhanced amount of compensation and the appellants 2

[2] AIR 2009 SC 3104

to 5/claimants 2 to 5 are entitled for equal shares out of the remaining 50% of the enhanced amount of compensation and on deposit, they are permitted to withdraw the same accordingly with interest accrued thereon. Other terms and conditions imposed by the Tribunal remain unaltered. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

12th October, 2018
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